Margaret H. Adams (State Bar No. 220089)
Law Office of Margaret Adams
12526 High Bluff Drive, Suite 300
San Diego, California 92130
Telephone: (858) 509-7750
Facsimile: (858) 509-7952
Email: **mimiadams@gmail.com**
Attorney for Plaintiffs

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SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AARON SCHRUM and JENNIFER SCHRUM, Plaintiffs, v. SAN DIEGO UNIFIED SCHOOL DISTRICT, Defendant.	Case No.: '08 CV 0911 JLS BLM **COMPLAINT FOR ATTORNEY FEES AND COSTS UNDER THE INDIVIDUAL WITH DISABILITIES EDUCATION ACT (20 U.S.C. § 1415(i))(3) and Cal. Educ. §56507)**

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INTRODUCTION

Plaintiffs AARON SCHRUM and JENNIFER SCHRUM (hereinafter "PLAINTIFFS") for a claim of relief against SAN DIEGO UNIFIED SCHOOL DISTRICT (hereinafter "DISTRICT"), allege as follows:

1. Invoking this Court's jurisdiction pursuant to 20 U.S.C. § 1400 *et seq.*, this claim is commenced to recover reasonable attorney's fees and expenses incurred in connection with an administrative proceeding under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415 *et seq.* (hereinafter "IDEA"). As parents of a child with a disability who prevailed in the administrative proceeding, PLAINTIFFS are entitled to reasonable attorney's fees and expenses.

JURISDICTION AND VENUE

2. This action arises under the laws of the United States and the State of California. Jurisdiction is conferred on this Court pursuant to 20 U.S.C. § 1415(i), 28 U.S.C. §1331 and California Education Code § 56507(b).

3. Venue is proper in this court under 28 U.S.C. §1391(b). The Defendant resides within the Southern District of California and all events which are the subject of this Complaint took place within the Southern District of California.

PARTIES

4. PLAINTIFFS reside in the City of San Diego within the boundaries of the San Diego Unified School District. PLAINTIFFS are the parents of J.S., a student with disabilities within the meaning of the IDEA. J.S. has, and has had at all relevant times, an Individualized Education Program (IEP) with the District.

5. DISTRICT is a public entity organized and existing under the laws of the State of California. The DISTRICT was the "local educational agency" for J.S. within the meaning of 20 U.S.C. § 1401(19)(A) at all times relevant to this action. Pursuant to the United States and California Constitutions, the laws of the State of California, and the IDEA, DISTRICT has had a duty to provide J.S. a free, appropriate public education (FAPE) at all times relevant to this action.

STATUTORY SCHEME UNDER IDEA

6. Pursuant to the IDEA, any parent may present a complaint concerning the identification, evaluation, or educational placement of a child, or the provision of a free appropriate education to such child and have the complaint resolved in an impartial due process hearing. As required by the IDEA, California has established an impartial due process hearing process conducted by the California Office of Administrative Hearings ("OAH").

7. The IDEA, 20 U.S.C. § 1415(i)(3)(B)(i)(I) provides that "In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing party who is the parent of a child with a disability." Attorneys' fees and expenses rendered in anticipation of a due process hearing fall within this authorization.

CLAIM FOR RELIEF

8. On July 11, 2007, J.S., through PLAINTIFFS, requested an administrative due process hearing in accordance with procedures authorized by 20 U.S.C. §1415, alleging that he was denied a free, appropriate public education. OAH opened a file pursuant to that request.

9. The administrative matter was heard before Eileen M. Cohn, Administrative Law Judge of OAH, Special Education Division, on November 27 through November 30 and December 18 through December 19, 2007, and January 10, 2008.

10. On February 21, 2008, OAH rendered its written decision, a copy of which is attached hereto as Exhibit "A". PLAINTIFFS and their counsel received the written decision via facsimile and overnight mail on February 22, 2008.

11. PLAINTIFFS incurred costs, attorney's fees and expenses in connection with the initiation and pursuit of that due process proceeding.

12. J.S. and PLAINTIFFS substantially obtained the remedy that they were seeking in the administrative action and prevailed in the due process proceeding. Accordingly, pursuant to 20 U.S.C. § 1415(i)(3) and California Education Code § 56507, PLAINTIFFS are entitled to reasonable costs including attorney's fees.

13. On April 30, 2008, PLAINTIFFS' counsel submitted an invoice for attorney's fees and costs of $74,121.46 to DISTRICT. A true and accurate copy of the invoice from PLAINTIFF'S counsel is attached hereto as Exhibit "B".

14. Despite a request for payment by PLAINTIFFS, DISTRICT has not agreed to compensate PLAINTIFFS.

15. The hourly rate claimed by PLAINTIFFS' counsel in the administrative proceeding is very reasonable and even below the prevailing rates generally charged by other counsel in the area with similar experience for the same field of law.

16. The number of hours of work performed was reasonable under the circumstances of the case.

17. The type of work performed was reasonable under the circumstances of the case.

18. The costs incurred were reasonable and necessary to prepare and present a claim and prevail at the administrative proceeding level.

REQUEST FOR RELIEF

PLAINTIFFS respectfully request the following relief:

1. Costs including disbursements and reasonable attorney's fees in bringing and prosecuting the administrative proceeding according to proof.

2. Costs, disbursements, and reasonable attorneys' fees in bringing and prosecuting this action.

3. Other relief as this Court may deem just and proper.

Date: May 21, 2008

By: Margaret Adams

Margaret Adams, Esq.
Attorney for Plaintiffs

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:	
STUDENT,	OAH CASE NO. N2007070295
Petitioner,	
v.	
SAN DIEGO UNIFIED SCHOOL DISTRICT,	
Respondent.	

DECISION

Eileen M. Cohn, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), Special Education Division, State of California, heard this matter on November 27 through November 30, December 18 through December 19, 2007, and January 10, 2008, in San Diego, California.

Student was represented by Margaret Adams, Attorney at Law. Father or Mother was present each day of the hearing.[1]

San Diego Unified School District (District) was represented by Jonathan P. Read, Attorney at Law, of Fagan Friedman & Fulfrost LLP. He was joined on certain days by Susan B. Winkelman, Attorney at Law, an associate with his firm. Ms. Patricia A. Laurick, Case Manager Teacher, Non Public School (NPS), District, was present each day of the hearing with the exception of January 10, 2008.

Student's due process hearing request was filed on July 11, 2007, his first amended request on July 25, 2007, and pursuant to an order issued by OAH, Student filed an "integrated complaint" on August 28, 2007.

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[1] Student's parents shall be referred collectively as Parents, or separately, where appropriate, as Mother or Father.

On August 28, 2007, District filed a request for due process regarding Student's request for independent educational assessments (IEEs). On September 11, 2007, OAH consolidated District's due process request with Student's integrated request. Student withdrew his request for reimbursement prior to the prehearing conference. In response, District withdrew its due process request.

Sworn testimony and documentary evidence were received at the hearing. At the conclusion of the hearing, the parties stipulated on the record that closing briefs would be filed by January 29, 2008. The parties timely filed their closing briefs and the matter was submitted. The parties waived the 45-day period for issuance of a final decision and stipulated that the decision would be issued no later than February 21, 2008.

ISSUES[2]

Did District deny Student a FAPE in his Individualized Educational Program (IEP) dated May 10, 2007, as modified July 19, 2007, for the 2007-2008 school year:

(1) by eliminating seven-and-a-half hours per week of home-based instruction as part of its plan to transition Student from individualized instruction at a nonpublic agency facility, ACES, Inc. (ACES NPA) to a District placement;

(2) when it unilaterally revised Student's goal 13; and

(3) by offering placement at the Diagnostic Center for Positive Change (DCPC)?

REQUESTED REMEDIES

Student requests: that the home feeding program be reinstated at seven-and-a-half hours per week; appointment of a speech and language therapist to administer the program at home and at the designated school site; and continued placement at ACES NPA for the 2007-2008 school year.[3]

CONTENTIONS OF THE PARTIES

Student contends that District failed to offer Student FAPE for the 2007-2008 school year. First, Student avers that District denied Student a FAPE by prematurely terminating a home-based program designed to facilitate his access to a full educational day by

[2] These issues and the contentions which follow were derived from the Prehearing Conference Order as further clarified by the parties at the due process hearing and in their closing briefs. The ALJ has revised the issues without changing their substance, for purposes of organizing this Decision.

[3] Student withdrew his request for placement in a specific NPS.

successfully conditioning him to eat soft foods from aides at home and then at the school site. At the time of District's termination of Student's home program, Student received 90 minutes of home-based services and four hours of instruction and related services at the ACES NPA site. Student maintains that dropping the 90 minute home based services denied Student a FAPE because it reduced the amount of agreed-upon instructional programming.

Second, Student claims that District denied Student a FAPE by unilaterally modifying IEP goal number 13 which was designed to address his unique feeding needs by increasing his tolerance of eating soft foods from an NPA paraprofessional at his home. District's modification restricted the feeding goal to the instructional setting.

Finally, Student claims that District's offer of a change of placement from the facilities of the NPA service provider, ACES NPA to a District site, DCPC, did not satisfy its obligations to provide Student a FAPE. From Student's perspective, District's site was designed as a temporary respite for pupils with severe behavioral problems, and was not designed as a longer-term placement as District intended for Student. Further, Student argues that DCPC does not accommodate Student's feeding needs or his need to be isolated from other pupils so that he can benefit from his educational program.

District maintains that Student failed to meet his burden of proof. District maintains that the deletion of the home feeding program from 13 at the May 10, 2007, IEP team meeting was consistent with Student's current educational needs and did not impede Student's access to education. District argues that it was not medically or educationally necessary to supply a home feeding program as part of Student's school day. The program could have been provided at school and Student could withstand a longer school day. District also argues that the modification of goal 13 was substantively appropriate as it was consistent with its termination of the home program. The modification of goal 13 did not rise to the level of a procedural violation as Student was not deprived of an educational benefit. Finally, District maintains that DCPC provided Student an appropriate instructional setting in the least restrictive environment. According to District, at DCPC it can provide the same individualized instruction as ACES NPA, within a setting less restrictive than that provided by ACES NPA.

District argues that it can not be held liable for failing to offer a FAPE because Student refused to consent to District's request to perform a medical assessment. District maintains that its obligation to provide a FAPE was conditioned upon Student's submission to its medical assessment.[4]

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[4] District had also contended at the prehearing conference and at trial that Student's claim as to District's placement for the 2007-2008 school year was not ripe for adjudication because District's offer extended only to January 2008, the date of Student's annual IEP, and did not cover the full school year. District did not raise this argument again in its closing brief. In its closing brief, it expressly alleged that its placement offer for the *2007-2008* school year was appropriate. District's now abandoned defense was contradicted by the mediation agreement and District's representative Ms. Laurick, who unequivocally testified that DCPC was intended as a year-long, if not long-term, placement. The offer will be treated in this decision as an offer for the 2007-2008 school year.

FACTUAL FINDINGS

Jurisdiction

1. Student, born October 22, 2001, lives with his Parents and sibling within District boundaries. The parties agree that Student is eligible for special education services under the category of autism. Student presently is provided intensive one-on-one instruction and related services at ACES NPA, four hours daily, including occupational therapy (OT) and speech and language (LAS) services.

Background

2. At issue is District's decision to terminate a home feeding program that was developed as part of a mediation settlement agreement and a related goal, and its offer of placement for the 2007-2008 school as developed in two IEP team meetings.

3. District and Student entered into a mediation agreement on October 17, 2006.[5] District agreed to contract with ACES NPA for intensive one-on-one instruction with Student four hours per day for up to five days per week on its educational campus, through July 21, 2007. District agreed to hold an IEP team meeting at the ACES NPA campus within 30 days to identify ACES NPA as Student's placement. District further agreed to contract with ACES NPA for up to 90 minutes per day in the home. The home-based hours were provided to work on feeding issues, specifically, the transfer of feeding from Parent to other persons and from the home setting to the school setting. The home based services were scheduled to expire on May 15, 2007.

4. In addition to the intensive instruction at ACES NPA, District agreed to fund ACES NPA to provide one hour a week of direct OT services, which at ACES NPA's election could be provided at its site or at Student's home. Also at ACES NPA's election the OT services may address feeding issues. District also agreed to fund ACES NPA to provide one hour of LAS services weekly on-site or at Student's home. As part of the agreement, Student's speech and language provider (SLP) or OT were required to provide Parents a total of six hours of training. District also agreed to develop a behavior support plan (BSP) for Parents to share with future service providers techniques that have proven to be successful with Student. District agreed to hold a second IEP team meeting within 60 days of receipt of an agreed-upon assessment plan at which time District and Student would review the assessments, Student's goals, his home program, and his support plan.

5. As part of the agreement District agreed to hold an IEP team meeting on or before May 15, 2007 to: develop an appropriate IEP; make an offer of FAPE for the 2007-

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[5] The mediation agreement resolved a previous dispute between District and Student. Generally mediation or settlement agreements are confidential and can not be introduced as evidence. (Evid. Code, § 1152.) However, the parties waived confidentiality and jointly requested that the mediation agreement be admitted. The mediation agreement is relevant as background to the disputed IEPs.

2008 school year; consider extending the school year; determine whether home-based NPA services are appropriate; determine whether any assessments should be conducted; and determine Student's need for transportation.

6. Student began attending ACES NPA on November 6, 2006. The intensive instruction also included OT and LAS services. As agreed, District held its 30 day placement IEP on December 5, 2006, to memorialize the ACES NPA placement. Another IEP team meeting was held on January 12, 2007. At that meeting ACES NPA summarized Student's present levels of performance and prepared additional goals which were made part of Student's IEP. Twenty-six goals were established addressing the full range of Student's needs.

7. Two goals related to Student's feeding issues: goal 12 and goal 13. Goal 12 addressed Student's oral motor deficits and Student's feeding issues by strengthening his oral motor skills through 12 different oral motor activities. Goal 13 was developed to implement the mediation agreement. It was designed to be implemented in the home setting to work on transferring Student's feeding from Mother to other persons in the school setting. ACES NPA worked on improving Student's tolerance for food at the school site by having Student participate in food preparation and feed his NPA.

8. As agreed, Student's IEP team meeting was held on May 10, 2007 (the "May 10 IEP" team meeting). District personnel in attendance included: Pat Laurick (Ms. Laurick), Case Manager for nonpublic schools (NPS); Deborah Clemm, District's speech and language pathologist (SLP); Phyllis Gahan, District's OT; and Laurie Chartier, District's nurse. Student was represented by Parents, Student's advocate,[6] and Dr. Andrew Mower (Dr. Mower), his neurologist. ACES NPA was represented by Jenny Althoff (Ms. Althoff) ACES Supervisor, Lisa Walker, ACES SLP, and Marie Benson, ACES OT. Dr. Donald A. Robin (Dr. Robin), an independent SLP pathologist, attended at the invitation of Parents. Dr. Mower requested that Dr. Robin review Student's oral motor deficiencies and offer his opinion as to whether Student had an oral motor apraxia.[7] Dr. Robin attended the IEP team meeting to report the results of his observations.

9. District decided to terminate Student's home feeding program on the last date required by the mediation agreement, May 15, 2007. Also as required it made an offer of placement for the 2007-2008 school year. It recommended a change of placement for Student during the 2007-2008 school year from ACES NPA to District's Integrated Life Skills Special Day Class at (ILS-SDC) located at DCPC,[8] a segregated special education

[6] To protect Student's privacy, his advocate's name has not been disclosed in this decision.

[7] Apraxia is a motor disorder that does not arise from a neuromuscular disorder. It is a manifestation of dysfunctions in the part of the brain where motor movements are planned and organized. There is a high incidence of apraxia among autistic children. It is difficult to definitively determine whether the apraxia has an etiology distinct from Student's autism.

[8] The ILS-SDC shall be referred to as DCPC throughout this decision.

campus. To prepare Student for DCPC District proposed a transition plan at the May 10 IEP team meeting which included, among other things, extending the school day at ACES NPA "perhaps" in small increments, continuing Student's extended school year at ACES NPA from July 23, 2007, to August 30, 2007, so that the DCPC staff and the ACES NPA could consult and observe, and having ACES NPA staff transition with Student to the DCPC site to train DCPC staff in bottle and feeding techniques.

10. To improve Student's ability to take nutrition, at the May 10 IEP team meeting District also offered as part of the transition plan 30 additional hours for the SLP to consult with Parents and train District staff. District also authorized 10 hours of consultation with Dr. Robin to guide District and ACES NPA's in their treatment of Student's apraxia and language development. District increased Student's LAS services at the May 10 IEP team meeting to one hour a day, from 60 minutes a week.

11. During the May IEP team meeting District modified goal 13 without discussing the modification with the team. The modification was consistent with District's decision to terminate Student's home feeding program. Goal 13 now provided that "food will be taken from staff at school program." The benchmarks set forth for the home program would now be implemented at school.

12. On July 19, 2007, the IEP team reconvened ("July 19 IEP"). In attendance were Parents, Student's advocate, ACES NPA, and District representatives and service providers. District finalized its transition plan. District extended the ACES NPA program through November 2, 2007. It offered to begin placement at DCPC on November 5, 2007. It offered to lengthen the school day at ACES NPA from October 1, 2007, until Student began at DCPC. The offer provided for dual enrollment in ACES NPA and DCPC prior to November 5, 2007. As in its May 10 IEP team offer, ACES NPA staff would provide up to 30 hours a week of support to Student at the DCPC site until January 2008, with the understanding that the goal is to fade ACES NPA staff as soon as practicable so that DCPC staff would takeover Student's instruction and services. The transition plan provided for ongoing review to further the overall goal of increasing DCPC's role and fading ACES NPA's involvement. ACES NPA's involvement could end before January 2008.

13. Parents consented to the offer of services in the May 10 IEP but objected to District's termination of the home feeding program and the proposed placement. Parent's provided District a detailed letter memorializing their objections. In that letter they also notified District that they disapproved of the modified goal 13 which they were not aware of until they read the IEP after the meeting. At the July 19 IEP team meeting, Parent's repeated their objection to District's placement offer.

Did District deny Student a FAPE by eliminating seven-and-a-half hours per week of home-based instruction as part of its plan to transition Student from individualized instruction at ACES NPA to a District placement?

14. School districts provide a FAPE when they offer special education programs that: address pupils' unique educational needs; are designed to provide the pupil educational benefit,[9] and are provided in the least restrictive environment. School districts' offers are measured independent of parents' preferred programs, even if the program or placement preferred by parents would have resulted in a greater educational benefit. Offers must be evaluated in light of information available at the time the offers were made, not in hindsight.

Student's unique needs

15. Student's home-based program was developed to address his unique needs in the area of feeding. At the time of the May 10, 2007, IEP team meeting, Student's feeding issues had been well-documented in a wide range of assessments, progress reports, observations, and IEP team meetings.

16. Student is autistic with pervasive developmental delays warranting comprehensive educational interventions. Student was an active and playful little child until he reached approximately 17 months of age. Around that time he stopped talking and playing with his brother, and appeared to slip into his own world. Student was identified as meeting the criteria for autism in August 2004. Shortly thereafter Student began receiving services from the San Diego Regional Center (SDRC). By July 2005 SDRC provided Student with applied behavioral analysis (ABA) services at his home to address his behavioral challenges. Currently, SDRC provides about 10 hours a week of services: seven-and-a-half hours during the week to feed and work on social and communication skills with Student and three hours of behavioral intervention services on the weekend.

17. Student has unique and profound oral motor needs. In addition to his autism, Student is challenged by a profound oral motor apraxia which affects his ability to control or orchestrate the movement of muscles which aide in eating and speaking.[10] Student's feeding issues were documented in Occupational Therapy (OT)[11] reports and observations. In April 2005 Student also began receiving OT services from SDRC for a minimum of 60 minutes a week. In the OT's September 2006 reassessment, she described Student as the "most complex" child she had seen in her career.

18. Student's unique oral motor needs impact his self-help needs in the area of feeding. Before Student evidenced developmental delays, he ate a wide variety of age-appropriate foods, including cheerios, chunky baby food, and crackers. He was able to chew his food. Since then Student has had a restricted diet of formula and soft foods. He drinks his formula through the enlarged nipple of a baby bottle. Student has not been able to bite or

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[9] Educational benefit must also be in conformity with Student's IEP, but since the IEPs are in dispute this factor is redundant and not separately addressed.

[10] Student's arm and limb movements also indicate that his motor functioning in these areas are apraxic. However, services needed to address these motor challenges are not in issue in this action.

[11] Throughout this decision OT shall be used as the acronym for the occupational therapist as well as occupational therapy.

chew food since he was about two-and-a-half. Student does not use his tongue when he eats. Student's nonliquid diet consists of cereal with applesauce. He compensates for his oral motor apraxia by using his lips along with a sucking motion to get the nutrition to the back of his mouth which triggers his automatic swallowing reflex. Student can drink his formula without assistance from a bottle and can drink water through a straw using a child's "sippy" cup.

Educational Benefit Without A Home Feeding Program as Part of Student's Transition Plan

19. All IEP team members agreed that Student had made exceptional progress with the intensive educational program developed by ACES NPA. Student's neurologist, Dr. Mower, wrote in an April 9, 2007, letter prepared for the May 10 IEP team meeting that he was impressed with progress made on his behavioral and self-help challenges. Dr. Mower advised that Student would likely be classified as mentally retarded in the future, and would never be fully independent, but he was capable of learning skills that would "promote some independence and make his caretaker's life easier." Dr. Mower noted that Student appeared to him to be "happy and attentive," rather than whining and angry. He was impressed with Student's improving self-help skills as evidenced by his ability to partially dress himself and take off his shoes.

20. Ms. Althoff worked directly with Student and as his case manager at ACES NPA since January 2006. Ms. Althoff reported that she was "blown away" by Student's progress. During Student's four hour day at ACES NPA staff had an opportunity to work on all his goals more than once. At the time of the IEP team meeting, Student was taking bottles consistently at ACES from a variety of adults, even less familiar adults, without hesitation. He helped prepare the bottle with each person. Student participated in many food-related activities. He worked on eating skills by feeding the NPA[12] apple sauce using the spoon. This represented a marked change in Student's feeding from his time in preschool. ACES NPA began reporting consistent progress in Student's tolerance for his bottle at school when District held the 60 day meeting on January 12, 2007. At the time of that meeting Student was becoming increasingly tolerant of having nonpreferred foods placed in his vicinity.

21. Ms. Althoff was particularly excited about Student's progress in accepting food from his NPA at the home. When the NPA first started working at home, a "backward chaining" approach was used which involved the NPA placing her hand-on-Mother's shoulder and slowly over time bringing her hand down to Mother's hand until the NPA was feeding with Mother hand-on-hand the last few bites of food. It took months for the NPA to successfully feed Student at his home. At the time of the May IEP team meeting Student had taken upwards of 34 bites of his soft food mixture from the NPA at home. Student continued accepting food from the NPA even after Mother left the table. He was eating at home with increased distractibility, e.g., Parents talking, dogs barking, television playing. He was participating in more food play at ACES NPA and at home. The NPA continued to work on

[12] NPA shall refer to the assistant, aide or tutor retained by the nonpublic agency, ACES, to work with Student.

the preparation phase with Mother to get the consistency, temperature "just right." Once this was accomplished it was expected that the NPA would be able to proceed with feeding Student at ACES NPA.

22. Ms. Althoff recommended that the home feeding program be continued to address Student's feeding issues. After the conclusion of the May 10 IEP team meeting she set forth in writing the skills and steps required for Student to successfully eat at ACES NPA and increase his time at the site. First, the NPA would have to successfully prepare the soft food mixture without the assistance of Mother. Second, the NPA would have to be able to eat at home without the Mother's presence. Third, Student would have to accept food in a different setting. This would have to be accomplished by mirroring his home setting, including, using the same utensils, brands of food, temperature of food, position of NPA, and pressure used by NPA when feeding Student. Additionally, feeding would only be attempted in this manner if Student chose to be fed soft food instead of his bottle.

23. Ms. Althoff's feeding plan was complicated by the fact that Student's current NPA only worked three days a week. Student could not be fed at ACES NPA when she was absent until a new NPA was trained following the same steps. Ms. Althoff indicated that food could be introduced at the ACES NPA site by June 11, 2007. While she provided an estimated start date for feeding at ACES NPA, she did not indicate when the home program could be terminated.

24. Ms. Althoff has worked at ACES NPA for six-and-a-half years. She specializes in relationship development intervention (RDI). She has provided services throughout the District to approximately 200 pupils. Ms. Althoff is a qualified and experienced behaviorist. Ms. Althoff has worked directly with Student since January 2007 and provided thoughtful testimony about Student's unique needs and progress. Ms. Althoff presented her views of Student's progress and placement regardless of whether it varied from the positions of either party. For this reason, she was a credible and trustworthy witness regarding Student's behavior, progress and school readiness.

25. District's position was that Student's home feeding program was not intended to emulate the school environment. The home program involved bottle feeding, soft food feeding, sensory-oral motor stimulation and food play activities. District clearly communicated its position to ACES NPA in February 2007 that feeding and activities related to oral defensiveness were the only appropriate activities for the home environment. Ms. Althoff stated that ACES NPA could effectively work on feeding and oral motor defensiveness in one-half hour at Student's home. In February 2007 Ms. Althoff stated that she could lengthen his day at ACES NPA in small increments subject to Parents' approval.

26. Ms. Althoff's proposed feeding plan was not consistent with her earlier representations about shortening Student's home program and extending Student's school day. Ms. Althoff's recommendations were compromised by Dr. Mower's medical directives to ACES NPA. Dr. Mower, in his letter of April 9, 2007, and again at the May 10 IEP team meeting, advised that Student could only attend school one-half day to accommodate

Student's "medical needs." He warned that the severity of Student's eating disorder required comprehensive treatment for an extended period of time. He warned that there remained a risk of aspiration with small food items and foods with thicker viscosity that could be difficult to swallow, such as thick frosting, mashed bananas, or mashed potatoes. He also demanded "due diligence" in feeding given his historical problems digesting lactose and possible milk allergy. When later asked whether Student required a swallowing study Dr. Mower said he did not.

27. Ms. Althoff testified that ACES NPA would not go against medical advice. At the IEP team meeting she advised against extending Student's ACES NPA day. However, in response to questioning at the hearing, she conceded that without a medical directive limiting Student's time at ACES NPA, Student would benefit from more time at its site to work on his IEP goals. She recommended increasing his time at the site in 15 minute increments every two to three weeks until he was attending ACES NPA an additional 90 minutes a day. Before adding another increment of time to his day she would review his progress.

28. Dr. Mower's reports consistently advised against lengthening Student's school day. Dr. Mower issued his first report of Student on August 30, 2006. Dr. Mower requested that the school day be halved so that Student could eat at home as Mother was the only person who could feed him. He cautioned the District to be guided by medical recommendations in addition to the advice of an OT and SLP in incrementally transitioning Student's feeding from his Mother to others.

29. Aside from his direct examination of Student, Dr. Mower relied upon information supplied by Parents, Student's advocate, or his interpretation of the feeding assessment conducted by Rady Children's Hospital and Health Center (Rady Team) in forming his opinion about Student's feeding issues or Student's school day. Prior to Student's placement at ACES NPA, at Parent's request, Dr. Mower issued a prescription instructing District to limit Student's schooling to one-half day until a feeding evaluation team indicated that Student's feeding had improved. After Student was placed in ACES NPA beginning in November 2006, Dr. Mower continued to issue medical advisories. On November 7, 2006, Dr. Mower issued a letter informing District that Student had a feeding disorder and required special handling in order to maintain adequate nutrition. Dr. Mower instructed the District to have transportation to arrive after Student's morning meal. "To do otherwise" he insisted "is medically risky and would cause him harm." Further Dr. Mower notified District that it was "medically contraindicated" to disrupt Student's current routine because as an autistic child such disruption could be "very harmful to his well-being."

30. Dr. Mower's directives were not restricted to medical advice and often interfered with ACES NPA's efforts to transition Student's feeding to a school setting. Mower was particularly influenced by Parents' suggestion that District was in favor of

surgically implanting a gastrointestinal tube, or G-tube, for feeding, or alternatively, would require Student to use a specific formula which Dr. Mower found repulsive.[13]

31. Dr. Mower insisted his programmatic directives were reasonable because no clear line of demarcation could be drawn between what was medically and educationally necessary for Student. Dr. Mower's directives suggested that he was the point person for all of District's questions related to Student's medical, nutritional and behavioral needs. When later pressed by the District to confirm Student's nutritional and feeding needs, Dr. Mower referred District to the Rady Team, or Student's primary care physician. When questioned at the due process hearing about his earlier opinions about Student's ability to adapt to changes, he conceded that these aspects of Student's program were better addressed by a psychologist or behaviorist. He maintained that as a neurologist he had to take on some of the responsibilities of a psychologist because clients often have to wait six months for an appointment.

32. Dr. Mower's interest and concern for Student was impressive. However, Dr. Mower failed to clearly acknowledge the limits of his own expertise and freely offered directives and prescriptions for Student's instructional program. Remarkably, Dr. Mower even allowed Student's advocate to preview and edit his written responses to questions posed by District's medical advisor. His credibility was severely impacted by his failure to disclose that his opinions did not encompass the views of Student's medical team, including her primary care physician and the Rady Team. His credibility was further eroded by his submission of his proposed responses to District's medical advisor to Student's advocate for editing, and his willingness to deliver edicts to the District about Student's program based upon rumor and innuendo. In truth, not one assessment, observation or report from District personnel suggested that Parents consider a G-tube or that Student be fed a vile tasting formula or any particular formula or food. For these reasons, Dr. Mower's testimony was considered in understanding Student's unique needs as an autistic child with oral motor apraxia, but otherwise was not considered credible.

33. Dr. Robins, an SLP, attended the May 10, 2007, IEP team meeting. He observed and assessed Student for about two hours the previous day, May 9, 2007. He noted that all Student's volitional oral movements, including lip puckering, mouth opening and closing, tongue protrusion and retraction, smiling and spontaneous movements during play, were characterized by distortions in time and space. He concluded that Student had a profound oral and speech apraxia that affected all his oral movements and severely limited his ability to use the oral structures for eating, speaking or other activities.

34. It was clear to Dr. Robins that Student wanted to eat, but that his oral apraxia limited his ability to ingest food. He further concluded that direct and intensive treatment of Student's oral apraxia was necessary to achieve gains in his eating. Overall Dr. Robins

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[13] Apparently Mother conducted an Internet search of District's medical advisor and discovered what she believed was confirming evidence of his bias in favor of the G-tube. On the contrary, District's medical advisor stated he would never recommend a G-tube to compensate for Student's disabilities.

concluded that Student demonstrated a profound neurogenic communication disorder, based upon multiple and compounding factors, including autism, oral and speech apraxia and profound receptive language deficits.

35. Dr. Robins has extensive expertise in oral motor impairments. He had previously developed an apraxia resource center for District to train District personnel on apraxia interventions. He is currently a Professor at the University of Texas Health Science Center where he is the Chief of the Speech and Language Program. He was a Professor at the University of California at San Diego and at San Diego State University where he headed the Department of Speech and Language Sciences. Many of his publications in the area of speech and language disorders were peer-reviewed. He has participated in clinical trials and collaborative research projects related to motor learning, motor control and motor speech disorders. At the due process hearing Dr. Robins responded with enthusiasm and optimism about Student's progress and prospects. His testimony about Student's oral apraxia and appropriate interventions was given great weight in view of his expertise, his observations of Student and Student's SLP, and his cogent analysis of Student's unique needs.

36. Whereas Dr. Robins's opinions regarding appropriate therapeutic interventions to treat Student's oral apraxia were given great weight, his recommendation that these treatments needed to continue in the home were not persuasive. Dr. Robins recommended that the current balance of a home program with clinicians coming to the home and ACES NPA be continued given Student's progress, and the benefit of parental involvement. Dr. Robins only observed Student in his home environment and like District's representatives, was impressed with Student's family and the comfortable, supportive and safe environment they created for Student. Unlike District's representatives, Dr. Robins maintained that it was critical to keep Student's therapy environment the same for Student to progress. However, Student's home program was designed to transfer feeding from his home to a school setting. District did not intend Student's home to be the venue for LAS or OT services. Goal 12 provides for numerous oral motor activities, all of which can be implemented in a school setting. Further, as noted in Dr. Robins's observations and that of District's observers, Student adapts easily to adult service providers at home and at ACES NPA. Dr. Robins proposed treatment recommendations were not limited to the home. His recommendations could be implemented by an SLP just as well at school setting like ACES NPA.

37. District adopted key elements of Dr. Robins proposal. In response to his recommendations, District agreed to increase speech hours, apraxia consultation and to apply new and more intensive oral motor interventions. District increased Student's LAS services to one hour each day. Dr. Robins considered Student's SLPs to be too regimented and limited in their therapy. He instructed the SLPs to reduce the apparent drilling of Student and instead to incorporate the oral motor exercises in a variety of play activities so that Student is unaware that he is receiving therapy. District retained Dr. Robins to review and guide oral motor interventions being provided by Student's service providers. Dr. Robins continues to work with Student's LAS providers.

38. By eliminating the home program Student also argued that District's transition plan denied Student a FAPE because it reduced his overall hours of instruction. Student's argument is without merit. District had consistently attempted to increase Student's time at ACES NPA. Parents through Student's advocate refused to allow ACES NPA to increase his hours at its site until Student was able to eat soft food from his NPA. However, Student's advocate was very firm about limiting the manner in which food could be introduced to Student, if at all. On May 17, 2007, Ms. Althoff reported that his NPA had accomplished a significant step toward conditioning Student to eat at ACES NPA when she mimicked some of the steps used in the home environment. This time Student requested that his NPA prepare his food mixture at ACES NPA. He watched without any "behaviors." When she put the food on the table Student signed "all done" and the NPA repeated "all done" honoring his request not to be fed. At the ACES NPA site the same NPA was also able to prepare his food mixture with a new NPA standing in close proximity to her. Student watched calmly and signed "all done" and she stopped working with the food. Student also made a bowl of applesause and took turns feeding his NPA at the ACES NPA site. He watched her eat and fed her a few bites. He signed all done and she took her last bite. Ms. Althoff reported that Student was happy throughout the exercise.

39. Student's advocate did not approve of ACES NPA's activities and requested that it stop these activities. She reminded Ms. Althoff that Parents did not approve of District's modification of goal 13 to be administered at school. Student's advocate concluded that Student's signing "all done" indicated that his transition to school feeding was premature. Further, Student's advocate told Ms. Althoff that feeding at ACES NPA could not proceed until all staff responsible for feeding him were trained so that Student can eat every day, not just the days his familiar NPA was present. According to Student's advocate, "intermittent access to food at school is contraindicated." This directive from Student's advocate, styled like a medical directive, undermined Ms. Althoff's prediction that Student would be feeding at ACES NPA as soon as his main NPA mastered food preparation at Student's home. Student's advocate is not a medical doctor, nutritionist, SLP or OT. She was not independently qualified or competent to render directives about Student's feeding. There was no evidence that her directives were derived from those with the appropriate expertise.

40. Evidence that Student's unique and extensive oral motor needs require intensive one-on-one intervention was overwhelming and uncontroverted. Student's feeding challenges not only affect his access to the educational setting but are a fundamental part of his oral motor and self-help goals. From the wealth of information available, it was reasonable for the District to conclude that Student's oral motor and feeding behavior therapies could be moved to the ACES NPA site and the instructional day lengthened without impairing Student's health. Student was now taking several bottles daily from a variety of people, familiar and unfamiliar. Student was healthy. No competent evidence was introduced establishing that feeding at home was medically indicated. An apraxia specialist was guiding Student's SLP to use more intensive and playful therapeutic interventions. Food play and various feeding-related activities were incorporated into Student's instructional day and did not have to be duplicated in the home environment.

41. District's decision to terminate the home feeding program was consistent with the extensive findings and recommendations of the Rady Team. The Rady Team assessed Student on September 21 2006. The Rady Team provided comprehensive recommendations to address Student's feeding needs at home and at school. Contrary to Dr. Mower's discredited prescriptions, the Rady Team never prescribed a half-day of school. It stated a full day of school "may not be possible at this point because Student refused to accept *any* nutrition outside the home." Further, the Rady Feeding Clinic did not recommend that school interventions follow successful home interventions. While encouraging extensive cooperation of all service providers, in all environments, its recommendations for encouraging feeding at a school site were different than its recommendations for home feeding.[14]

42. Although Ms. Althoff was optimistic that Student would be ready to be fed at ACES NPA on a date certain, Student had never eaten soft food anywhere but home before, even after he accepted food at home from a trusted preschool teacher. At the time of the May 10 IEP team other than Mom and Student's NPA no one else had fed Student soft food on a consistent basis. Student had not yet allowed his Father to feed him. Student's opportunity to transition to feeding at school was further delayed by his advocate's insistence that feeding at school could not proceed until a successful home feeding routine was established with all aides. At the July 19 IEP team meeting, District expressly increased the hours at ACES NPA by 90 minutes for one month prior to Student's transition to DCPC. Parents did not sign the IEP.

43. Parents worry about Student's safety and the impact on his behavior if he was fed at ACES NPA or at a District site before they were assured that the NPA or District aide could properly feed him in their home. In late 2006 Father performed the "Heimlich maneuver" on Student. Prior to the inception of ACES NPA's program, in-home behavioral therapists had attempted to condition Student to eat by placing and keeping bits of food in his mouth until he swallowed.[15] Parents' concern for their child's safety and well-being is understandable. However, the evidence introduced was not sufficient to establish that Student could not attend ACES NPA or other instructional setting for an additional 90 minutes until he could ingest soft food outside the home.[16]

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[14] Due to the severity of his feeding disorder and the impact it has on his overall functioning, the team recommended that improvement in this area be considered a goal in his academic plan along with smaller specific goals (e.g., tolerating touching certain foods) as markers, "with the understanding that this will be a long term process."

[15] Parents accused District of having force fed him in preschool by dropping food from the air and behind him, withholding a preferred activity until he drank a set number of sips from his bottle, and placing nectar on his lips. District denies that it force fed Student.

[16] Dr. Richard Shaw, Medical Director, Stanford's Children Hospital, testified that expertise of a multidisciplinary team including a medical doctor was required to conduct a feeding assessment. Dr. Robins provided protocols for school districts to use for pupils with swallowing disorders which are equally appropriate here. Student's safety and health are paramount, but feeding is also part of his oral motor and self-help needs and the program should include a plan for introducing soft foods.

44. While Student's home may be his most comfortable environment, and Parents might prefer Student to continue with feeding him at home, ACES NPA was ready and able to working on feeding Student at its site. ACES NPA had established the ideal environment for implementing a site-based feeding program. ACES NPA had established a routine for Student and Student was responding well to his environment and to his NPAs. Student had been receiving support at home from the same person(s) he sees daily at ACES NPA. ACES NPA was able to mirror the home environment and follow the same preparation process at the ACES NPA site. Student was receptive to having his soft food presented to him at the ACES NPA site, if not yet willing to eat. Student was responding well to therapy at the school site. For all the reasons stated herein, District's decision to terminate the home feeding program during the snapshot of the May 10 IEP team meeting did not deny Student a FAPE.

Did District deny Student a FAPE when it unilaterally revised Student's feeding goal 13?

45. A parent plays a significant role in the development of the IEP and is a required and vital member of the IEP team. The IEP team must consider the concerns of a parent for enhancing her child's education throughout the child's education. In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but also a meaningful IEP meeting. A parent meaningfully participates in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE, or caused a deprivation of educational benefits.

46. Parents, Student's advocate, and Student's neurologist were among the numerous participants at the May 10 IEP team meeting. During the two hour meeting Parents witnessed and participated in a spirited discussion concerning Student's progress and placement. Dr. Mower, Dr. Robins, Ms. Althoff and District staff shared their opinions. District unequivocally announced that it was terminating Student's home feeding program and offered placement in DCPC. Parents executed the IEP registering their disagreement with the termination of the home feeding program and District's offer of placement.

47. During the IEP team meeting, Ms. Laurick, District's NPS case manager, also revised feeding goal number 13 which was developed at the January IEP team meeting to implement the home feeding program. As originally written the goal provided: "by January 2008 Student will demonstrate improved tolerance for food as demonstrated by his ability to take up to ten bites of three foods he is familiar with from home when fed to him as well as to place eight new foods to his lips, teeth or tongue (no ingestion) on 75% of the opportunities." Ms. Laurick modified goal 13 to indicate that "food will be taken from staff at school program." There were three benchmarks to the goal. At home, Student had met the first benchmark, had made progress toward the second benchmark at the time of the May IEP team meeting, and met the second benchmark by June 28, 2007. Ms. Laurick's modification

of goal 13 was consistent with the termination of the home program which had been extensively discussed at the May 10 IEP team meeting. With the modification, Student would work on the same benchmarks, but at the ACES NPA site.

48. Parents and Student's advocate presented a signed document detailing their objections to the May 10 IEP. Parents had an opportunity to present their written dissent less than two weeks later at another IEP team meeting. On May 23, 2007, an IEP team meeting was held for the purpose of discussing assistive technology. In the May 23 IEP it was noted that "parents continued to dispute termination of the home program and requested assistance from SDRC." On June 13, 2007, District provided Parents with a written letter responding to their objections and detailing its reasons for terminating the home program and modifying goal 13 to support its offer of a longer school day. Ms. Laurick clearly stated that it did not believe an extension of the school day was dependent on Student's acceptance of soft food. She further indicated that ACES NPA was in a position to begin the introduction of soft foods at the school site.

49. Undoubtedly, Ms. Laurick was required to read District's modification of goal 13 to the IEP team members at the May 10, 2007 IEP. However, goal 13 was directly related to the home feeding program which was extensively debated. Goal 13 was modified consistent with the District's stated intent to terminate the home program and move Student's services to the school site. In view of the subsequent communications between District and Parents and the follow-up IEP team meeting of May 23, 2007, Parents had multiple opportunities to express their views and participate as members of the IEP team. Notably, Parents also participated as IEP team members by instructing ACES NPA not to implement goal 13 at its site. Accordingly, Ms. Laurick's procedural violation was di minimus and did not impede Parents' right to participate. In addition, the di minimus procedural violation did not deny Student a FAPE for the same reasons the termination of the feeding program did not deny Student a FAPE. Goal 13, including all the benchmarks, could have been worked on at the ACES NPA site.

Did District deny Student a FAPE when it offered placement at DCPC for the 2007-2008 school year?

Unique Needs

50. District knew from the multitude of assessments and observations of Student that he had significant communication, adaptive, and sensory needs. District and Parents reached agreement on many aspects of Student's services. District and Parents were in general agreement that a coordinated team approach among District, Parent and all his service providers was required to address Student's complex needs. District and Student agreed that given his need for intensive one-on-one intervention it was best to integrate his OT and LAS services within his instructional day. At the May 10 and July 19 IEP team meetings District and Parents agreed to increased and more intensive OT and LAS services, resumption of vision therapy, and assistive technology. District engaged Dr. Robins to guide Student's apraxia interventions.

51. Student's unique sensory needs are not restricted to his oral motor challenges. Student has difficulty processing multi-sensory input and demonstrates severe sensory defensiveness in multiple areas, including auditory, tactile and vestibular. When confronted with multiple stimuli he demonstrates "shut down" behavior, i.e., he no longer is able to respond to input from his providers. Parents had previously reported that Student quickly becomes overwhelmed with environmental stimuli and can not participate in family gatherings without being removed to a quiet place after a few minutes. Since Student attended ACES NPA and began receiving more intensive intervention, his extreme responses to multiple stimula have declined but still persist. He is better in his home environment and tolerates stimulus from adults over peers.

52. District's psychologist prepared a detailed multi-disciplinary assessment for the July 19 IEP team meeting. From this report District knew that Student's overall adaptive functioning remained below the first percentile for his age. Adaptive behavior is the performance of daily activities for personal and social sufficiency. It also knew that adaptive functioning could become worse depending on the interventions used, changes in his environment, physical or emotional trauma, or other events. Student was delayed in his capacity to get his needs met, to have greater control of his environment, to convey his emotional status and needs, and to respond to varied language demands.

Educational Benefit of DCPC

53. DCPC is located on a District campus devoted to special needs and at-risk pupils. It shares the campus with with three other special needs facilities. DCPC was originally designed as a short term placement for pupils removed from their classroom because of their disruptive or maladaptive behaviors. At DCPC these pupils are exposed to behaviorial interventions in a highly structured setting. The expectation is that pupils exposed to these interventions will acquire skills to enable them to transition back to a general education campus. At the time of the IEP team meetings DCPC was still promoted as a turnaround placement for troubled pupils, not a long term placement.

54. Ms. Laurick presented District's offer at the IEP team meeting, but was supported by a District team which included District's lead SLP for NPS, Ms. Clemm, and Ms. Gahan, District's Senior OT for NPS. District personnel are extremely qualified educators and direct service providers. Ms. Laurick is an experienced educator and manager of Distirct's NPS program. She has 30 years experience in special education, including as a case manager coordinating pupils primarily with autism, and as a diagnostic resource teacher in the ILS classroom. Ms. Clemm has extensive experience in the area of communication disorders assessment and intervention. At the hearing Ms. Clemm reported that District had received a national award for its innovative LAS programs. She was particularly proud of the level of training District provides to its SLP. Ms. Clemm was responsible for increasing Student's LAS from one to five hours a week, for coordinating closely with ACES NPA's SLP, and for securing Dr. Robins to train Student's service providers in oral apraxia. Ms. Gahan also has many years experience as an OT.

55. From Ms. Laurick's, Ms. Clemm's and Ms. Gahan's observations of Student in his home and at ACES NPS, they concluded that he needed a structured educational setting. They appreciated the extensive progress he made at ACES NPA. However, they were concerned that it was not a school, but only an office building housing skilled service providers. They noted how comfortable Student had become with all the adults moving around him, at home and at ACES NPA. They were impressed with Student's family, and the supportive home reported they created for him. They observed that Student had become more compliant, and was able to follow a routine imposed on him by ACES NPA, even when he didn't want to work. At home he could eat and work with his therapists with increasing distractability. Despite his progress they insisted that Student needed to move to DCPC. As Ms. Clemm explained, Student was successful at the ACES NPA site but he was outgrowing the placement, like a shoe that once fit but is now too tight.

56. Student required intensive one-on-one LAS and OT therapy. The DCPC placement offered a stable of experienced and credentialed SLPs. Three SLPs were located on the DCPC campus. District would be able to better coordinate the team of service providers working with Student and they would be able to collaborate. In contrast, when ACES NPA's SLP was absent Student was not served.

57. Mr. Bruce Dake (Mr. Dake), the school psychologist at the helm of DCPC testified. Most pupils at DCPC have severe behavior problems that put them at risk for suspension or referral. At the time of the May and July 2007 IEP team meetings, as a condition of enrollment, pupils had to submit to a functional analysis assessment (FAA). District requires an FAA where a pupil has caused property damage or demonstrates maladaptive behaviors that are more serious than behaviors demonstrated by pupils with behavior support plans (BSP) like Student. Student's behaviors have been well managed with his BSP. Mr. Dake admitted that Student did not fit the usual profile of those enrolled at DCPC.

58. Mr. Dake offered that DCPC could be adapted to serve Student and that its large staff was ideally suited to provide concentrated services to a small pupil population. In the classroom where Student would most likely be placed, there were six adults to four children. DCPC's classroom paraeducators are credentialed teachers. At a minimum the class would include two paraeducators and one special education teacher. Mr. Dake considered the advantages of DCPC to be its high concentration of credentialed and expert teachers and small pupil population. At DCPC Student would have access to an apraxia consultant and a school nurse. DCPC has three full-time SLPs for 60 pupils, which is the highest concentration of SLP staffing in the District. Ms. Gahan testified that DCPC is equipped to provide Student with on-site OT and to address his oral motor needs from an OT perspective. However, Student would not be assigned a full-time paraeducator or aide devoted only to him.

59. Mr. Dake never observed Student or attended his IEP team meetings and was not familiar with his program at ACES NPA. He didn't know why Student was being educated at ACES NPA in a room isolated from other pupils. He testified that he was

familiar with eating disorders but the prevalent disorder required G-tube feeding, not oral apraxia. He provided relevant background information about DCPC, but given his lack of involvement with Student, his testimony carried little weight in determining whether DCPC was an appropriate placement.

60. There are advantages to a DCPC placement. Having all of Student's service providers collaborating under one District umbrella would be a great benefit to Student. The services provided now by ACES NPA could be easily duplicated with credentialed District teachers and service providers.

61. Despite the concentration of expertise at the DCPC school, within the snapshot of District's placement offer, DCPC did not provide an educational benefit to Student. At the time Student enrolled in ACES NPA his severe delays could not be addressed unless he was placed in an environment devoid of distractions. At ACES NPA Student received one-on-one instruction in a small enclosed room. Student made great progress at ACES NPA with one-on-one instruction in an isolated environment. ACES NPA is located in a two story building. There are six classrooms at ACES NPA and one classroom is dedicated to Student four hours each day. Student's instructional day is fixed. He is met at his bus by his NPA. He is always accompanied by an NPA. Student enters his room and works on the correct placement of his backpack and supplies. He receives speech therapy and then participates in circle time only with his NPA. He does some one-on-one work and then he works on his bathroom routine, including waiting at the bathroom door. He uses the sensory gym each day and given the proximity of the gym to his classroom he is able to navigate his way to the gym with little assistance. At 11 a.m. Student makes his bottle and receives some respite with deep joint compressions. After his break he works on some cognitive exercises like an art project or sorting, and then has a play activity. His OT and LAS therapies are worked into his daily schedule. He always has one-on-one assistance.

62. Ms. Althoff testified that she had to house Student in a small enclosed room to successfully instruct Student. She found a direct correlation between the elimination of distractions and his ability to achieve his IEP goals. Student is extremely sensitive to noise. Ms. Althoff set up a room far away from noisier classrooms and sound proofed it with carpeting. Student still remained challenged by street noise and needed to be redirected. There is no dispute that Student has met or exceeded the majority of his IEP goals ahead of schedule at ACES NPA by being taught in this manner.

63. At DCPC Student would be educated in a large room within earshot of other, possibly disruptive, pupils. Father testified about his visit to DCPC in November 2007. He met with Dr. Dake and visited all three classrooms. The classrooms were organized with five feet high partitions. In one class there was a padded enclosure that was used as a "time-out" room for pupils who were having a rough day.

64. Father observed the elementary school class. On that day there were two pupils, aged six and 10. During his visit the ten year old was having a tantrum. At first he laid on the floor, kicking and making noise. At one point he stood up and started thrusting

his arms as he moved about the room towards the door where Father stood. The teacher and the classroom aide restrained the pupil and placed him in the padded room. It was apparent that the six year old pupil was preoccupied with what had occurred and was having difficulty focusing on his work. Student would not be able to regulate his own behaviors if he was in the same room as this pupil. According to Father he would "shut down."[17] Father's observations were consistent with Ms. Althoff's observations of Student at ACES NPA. Student is exposed to other pupils in the OT room. At times he can tolerate being in the room with other peers (with their aides) for upwards of 10 minutes. However, Student is extremely sensitive to noise. In particular, he can not tolerate another pupil crying. When another pupil cries so does he and he can not be consoled or redirected to another activity. According to Ms. Althoff Student whines most of the time as a means of communication or to show his displeasure with an activity, but when he is exposed to too much noise or stimulation, he can not be redirected to his work. Given the extensive interventions dictated by his IEP and incorporated into his daily instructional day, District's offer of an open classroom without a one-on-one aide for Student, was not reasonably calculated to provide Student an educational benefit.

65. To be an appropriate placement for Student, DCPC also must accommodate his feeding program. Although Student does not yet accept soft foods outside the home, District developed a goal for feeding at school and its placement offer provided that it would be trained by ACES NPA in bottle and feeding techniques. District has relied upon ACES NPA to develop a feeding protocol. To meet Student's unique needs and modified goal 13, District is required to develop a feeding plan for the introduction of both liquid and soft foods that would work at the DCPC site. ACES NPA recreated the home environment by using a kitchen and the same bottles, bowls and kitchen utensils used at home. Student also has a quiet place to drink his bottles. District has not offered any plan as to how it will introduce Student to liquids and soft foods at DCPC.

66. District claims that Althoff is not an educator and her views should not be given any deference. On the contrary, Ms. Althoff's views of Student's behavior and progress have considerable weight because District entrusted her and ACES NPA with Student's instruction and behavior plan since November 2006. ACES NPA developed Student's behavior plan. It developed his goals and objectives that were incorporated into the January 2007 IEP and were approved by District. With the exception of goal 13, District has not amended these goals. As part of Student's team at ACES NPA, Ms. Althoff is also part of the transition team District included in its placement offer. District intended to transplant Student's program wholesale from ACES NPA. It did not question Ms. Althoff's credentials when it contracted with ACES NPA or offered to place Student in DCPC with ACES NPA's assistance.

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[17] Father was also concerned about Student's safety. However, District demonstrated that DCPC had adequate staffing to keep its pupils safe and secure.

67. Student requires a quiet and isolated environment and one-on-one assistance at all times to access and benefit from his instruction. Despite the concentration of credentialed educators and service providers and its one-to-one teacher to pupil ratio, DCPC does not provide an isolated environment for Student to work on his goals with an aide dedicated to him. In contrast, ACES NPA has proven that Student can achieve an educational benefit in a quiet and isolated environment with one-on-one assistance. At the time of District's offer, DCPC could not accommodate Student's unique sensory and adaptive needs. District denied Student a FAPE by offering DCPC for the 2007-2008 school year because given Student's unique needs the placement was not reasonably calculated to provide Student an educational benefit.

Least Restrictive Environment

68. At the time of District's offer, DCPC was not the least restrictive environment for Student. Student required a more restrictive environment than DCPC offered. A four-part balancing test is used to determine whether a pupil is being taught in the least restrictive environment. The balancing test was developed to determine whether severely disabled pupils should be mainstreamed. The balancing factors are also instructive in determining the appropriate scope of a pupil's interaction with nondisabled peers, and to a lesser extent, other disabled peers. District and Student agree that Student is not prepared to be with typical peers. The factors applied are: (1) the educational benefits to the child of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have on the teacher and the children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting. Factors three and four are not in issue.

69. Student achieved an educational benefit at ACES NPA in an isolated environment. Student demonstrated his potential for further advancement by his rapid achievement of most of his goals. At the time of District's offer there was insufficient evidence of Student's ability to maintain his focus and progress on his goals in an open classroom. On the contrary, there was little evidence that Student can learn from his peers, or work with them as a means to accomplish his goals. Student is nonverbal, does not understand language, and relies on nonverbal prompts and more recently, assistive technology, to communicate his needs. Moreover, his sensory and adaptive challenges threaten his ability to focus on his instruction.

70. In the January 2007 IEP team meeting ACES NPA presented 26 goals which were adopted by the IEP team. Not one goal addressed peer interaction. ACES NPA provided services based upon the agreed-upon IEP team goals. It developed an intensive preacademic program which focused on developing basic skills. Without an applicable goal ACES NPA did not formally track Student's reactions to peers. Nevertheless keeping him focused so that he could engage in instruction or therapy involved reducing his exposure to stimulus that would upset him. After Ms. Laurick expressed her concern about Student's isolation, Ms Althoff focused on exposing him to other peers in the OT room. However,

after Student was exposed to another peer crying for under a minute he too cried and could not be redirected. At most, Student can tolerate 10 minutes of exposure to other peers in the OT room and stay on-task. Student's reaction to peers is different than his reaction to adults. As his SLP observed, while adults are predictable because they know how to regulate their behaviors the sensory input Student receives from peers is unpredictable.

71. Student has the potential to receive nonacademic benefits from exposure to peers, but not at DCPC. District was particularly concerned with Student's isolation at ACES NPA. Ms. Laurick and Ms. Clemm were concerned that as an autistic child Student would become more regimented and attached to his isolation at ACES NPA and over time it would be extremely difficult for him to be in the company of his peers. District relied upon an isolated progress report from Student's preschool teacher to demonstrate that Student is capable of achieving an educational benefit with peers. However, that same teacher participated in District's 2006 multi-disciplinary assessment where District indicated that Student only tolerated the "close presence" of other pupils "in certain situations" and only appeared to observe them "sometimes." Student did sit at the lunch table with his peers and did jump on the same play apparatus as his classmates.

72. Over time Student may become more tolerant of his peers in limited situations. However, DCPC does not offer a stable pool of age appropriate peers for him to be with at the lunch table or on the playground. Pupils of various ages, most with serious emotional or behavior problems, cycle through DCPC within three or four months before they return to their long-term placements. Mr. Dake testified that to his knowledge only four or five pupils stayed as long as a year. Given his many other challenges at the time of District's offer, the nonacademic benefits to peer exposure at the lunch table or on the playground, are incidental and do not support a finding that District offered Student a FAPE.

73. At the time of District's offer, DCPC was not the least restrictive environment for Student. Student requires intensive instruction in an isolated setting and at the time of District's offer needed more time in a stable instructional environment to make progress. The nonacademic benefits to him of exposure to an itinerant pool of pupils of varying ages, most with serious behavior problems, were incidental and could not support a finding that District offered a FAPE for the 2007-2008 school year.

74. At the time of the May 10 and July 19 IEP, ACES NPA, was reasonably calculated to provide Student a FAPE for the 2007-2008 school year. ACES NPA had prepared 26 goals for Student. He was progressing in most areas at a pace that surprised his NPAs. ACES NPA had created an isolated environment so that he could remain focused on his instruction and therapies. He was being introduced to more intensive therapeutic interventions by his SLP under the guidance of Dr. Robins. ACES NPA was tailored to Student's unique needs and provided Student an educational benefit in the least restrictive environment.

District's Motion to Dismiss

75. District contends that it was not obligated to provide a FAPE because Parents would not agree to a reassessment of Student's medical needs. School districts must conduct a reassessment of a special education pupil not more frequently than once a year, but at least once every three years. In performing a reassessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. Based upon such review, the district must identify any additional information that is needed by the IEP team to determine the present levels of academic achievement and related developmental needs of the pupil and to decide whether modifications or additions in the child's special education program are needed.

76. District maintained that it needed to update the assessments to make an offer of FAPE at the May 10 IEP team meeting. District insists that is was prevented from assessing Student due to Student's objections to its assessment plan. District and Student agreed that the need for assessments would be discussed at the May 10 IEP Team meeting. Nevertheless District provided Student's advocate with a proposed assessment plan as early as February 22, 2007. Student's advocate justifiably requested clarification as Student had been the subject of a multitude of assessments, many within the past year. Student had been the subject of a joint LAS and OT assessment, and approximately six other assessments addressing his speech and language and communication needs. A behavior support plan was prepared shortly after ACES NPA was retained. District had in its possession two multi-disciplinary assessments prepared by District's psychologists and progress reports from ACES NPA. Further, prior to the May and July IEP team meetings, District's SLP, OT, NPS case manager and registered nurse had conducted a total of six observations of Student at the ACES NPA site and at home. Ms. Clemm, District's SLP agreed that observations were a better source of information at that time because District already had "a lot of information" about Student. Finally, District reviewed and relied upon the extensive findings and recommendations of the Rady Team from its assessment in September 2006. The District had no reason to believe that the report was outdated.

77. District was not required by statute to conduct an assessment during 2007. Student's triennial assessment was not due until March 2008. Parents were not obligated to consent to a reassessment as a condition of Student's receipt of special education services. Parents consented to District's request to conduct its multi-disciplinary triennial assessment early, and the July 19, 2007 IEP team meeting was designated as the triennial meeting. Parents did not consent to a medical-feeding assessment.

78. With the abundance of assessments available, including a triennial multi-disciplinary assessment, District's attack on Student's right to a FAPE is limited by default to purportedly essential medical-information it needed to make its offer at the May or July IEPs. Medical-feeding information was needed, if at all, to determine if the home feeding program should be terminated and to develop a feeding plan for the school site. However, District's claim that Student's advocate thwarted its efforts to obtain medical-feeding information essential to offering a FAPE at the May 10 IEP team meeting was discredited by

the testimony of its medical consultant, Dr. Howard Taras (Dr. Taras). Dr. Taras first communicated by e-mail with Dr. Mower on August 31, 2007. Dr. Taras is a full-time faculty member in pediatrics at the University of California at San Diego. He regularly consults with school districts on the educational needs of pupils with medical issues. He never directly examines a pupil, but interprets the information provided by a pupil's own doctors for the schools so that the school can provide appropriate interventions. District did not advise Dr. Taras of the May 10 IEP team meeting, or of the invitation from Student's advocate to consult with Dr. Mower during Student's examination in April.
Dr. Taras disclosed at the hearing that he was first retained by the District two months before his communication with Dr. Mower, or around June 30, 2007, but he did not receive or review Student's records until two weeks before he actually communicated with Dr. Mower on August 31, 2007.

79. As part of its reassessment District was required to first review previous records before requesting additional assessments. Because Dr. Taras only commenced this review around August 15, 2007, District did not fulfill its obligations for conducting a reassessment until after it completed its offer on July 19, 2007. Moreover, District provided insufficient evidence that the restrictions imposed on Dr. Taras prevented him from timely conducting the first phase of review required in any reassessment. District simply failed to timely recruit his services.[18]

Compensatory Services

80. School districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a FAPE. The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. These are equitable remedies that courts may employ to craft "appropriate relief" for a party. The award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place.

81. Compensatory relief, if any, is appropriate for District's denial of FAPE by offering DCPC for the 2007-2008 school year. Student remains at ACES NPA four hours a day and continues to make substantial progress. Student's intensive therapies have been incorporated into his day. Student continues to receive related services as agreed to in his May 10, May 23 and July 19 IEPs. ACES NPA was the appropriate placement for Student during the 2007-2008 school year. Appropriate compensatory relief is placement in ACES NPA with the related services agreed to and in place as a result of the May 10, May 23 and July 19 IEPs.

82. Student would have benefited from an increased day at ACES NPA, to work on his goals and feeding issues. ACES NPA also serves Student at home seven-and-a-half hours per week on contract with SDRC. As part of SDRC's home program ACES NPA

[18] District may file a due process complaint to compel a medical assessment if it was convinced that it needed one in order to provide a FAPE. (Ed. Code, § 56501, subd. (a)(3).)

feeds Student. By having the same people in the home that are at school, ACES NPA Student's school feeding program could continue with the same people feeding Student at home. However, Parents objected to any attempt to feed him and to increase his time at the site. For this reason, compensatory relief of 90 minutes of additional instruction is not appropriate.

CONCLUSIONS OF LAW

Applicable Law

Burden Of Proof

1. As the petitioning party, Student has the burden of persuasion on all issues. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387] (*Schaffer*).)

Special Education and Related Services

2. Pursuant to California special education law[19] and the Individuals with Disabilities in Education Act (IDEA), as amended effective July 1, 2005, children with disabilities have the right to a free appropriate public education (FAPE) that emphasizes special education and related services designed to meet their unique needs and to prepare them for employment and independent living. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) FAPE consists of special education and related services that are available to the pupil at no charge to the parent or guardian, and conform to the pupil's individual education plan (IEP). (20 U.S.C. § 1401(a)(9); *Winkelman v. Parma City School Dist.* (2007) __ U.S. __ [127 S.Ct. 1994, 2000-2001;167 L.Ed. 2d 904].)

3. "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29).) "Related services" are transportation and other developmental, corrective and supportive services as may be required to assist the child in benefiting from special education. (20 U.S.C. § 1401(26)(A); Ed. Code, § 56363, subd. (a) [In California, related services are called designated instruction and services].) Related services" include speech-language, physical and occupational therapy and school nurse services as may be required to assist the child in benefiting from special education.) Medical services as related services are provided for diagnosis and assessment only as may be required to assist an individual with exceptional needs to benefit from special education. (*Id.*; Ed. Code, § 56363, subd. (a); *Irving Independent School Dist. v. Tatro* (1984) 468 U.S. 883, 891 [104 S.Ct. 3371; 82 L.Ed.2d. 664].)

[19] The California Education Code was amended to conform to the amended IDEA and applicable federal regulations set forth in Title 34 of the Code of Federal Regulations, effective October 14, 2006. The amendments to the California Education Code are effective October 10, 2007. This action was filed prior to the effective date of the amended California Education Code. Accordingly, the most recent amendments to the California Education Code are not applicable to this action.

4. In *Board of Education of the Hendrick Hudson Central School District, et al. v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is "sufficient to confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.) The Ninth Circuit has referred to *Rowley's* "some educational benefit" simply as "educational benefit" (See, e.g., *M.L. v. Fed. Way Sch. Dist.* (9th Cir. 2004) 394 F.3d 634, 645.) It has also referred to the Rowley educational benefit as "meaningful educational benefit." (*Adams v. Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.) The Third and Sixth Ciruits have required that the benefit be "meaningful.".(See e.g., *L.E. v. Ramsey Bd. of Educ.* (3d Cir. 2006) 435 F.3d 384, 395; *Deal v. Hamilton County Bd. of Educ.* (6th Cir. 2004) 392 F.3d 840, 862.) Other circuits have interpreted "some educational benefit" to mean more than trivial or *de minimus* benefit. (See, e.g., *Houston Indep. Sch. Dist. v. Bobby R.* (5th Cir. 2000) 200 F.3d 587-588.)

5. To determine whether the District offered Petitioner a FAPE, the analysis must focus on the adequacy of each district's proposed program. (*Gregory K. v. Longview School District* (9th Cir. 1987) 811 F.2d 1307, 1314 (*Gregory K.*).) If the school district's program was designed to address Petitioner's unique educational needs, was reasonably calculated to provide him some educational benefit in the least restrictive environment, and comported with his IEP, then the District provided a FAPE, even if Petitioner's parents preferred another program and even if his parents' preferred program would have resulted in greater educational benefit.

6. Federal and state law requires school districts to provide a program in the least restrictive environment to each special education student. (See 34 C.F.R. §§ 300.114, et. seq.) A special education pupil must be educated with nondisabled peers "[t]o the maximimum extent appropriate," and may be removed from the regular education environment only when the nature and severity of the student's disabilities is such that education in regular classes with the use of supplementary aids and services "cannot be achieved satisfactorily." (20 U.S.C. § 1412(a)(5)(A); 34 C.F.R. § 300.114(a)(2)(i), (ii).) A placement must foster maximum interaction between disabled students and their nondisabled peers "in a manner that is appropriate to the needs of both." (Ed. Code, § 56031.)

7. A four part balancing test is used to determine whether a pupil is being taught in the least restrictive environment. The balancing test was developed to determine whether severely disabled pupils should be mainstreamed. However, the balancing test is also instructive in deternining the appropriate scope of a pupil's interaction with other peers, nondisabled and to a lesser extent, other disabled peers. The factors applied are: (1) the educational benefits to the child of placement full-time in a regular class; (2) the non-academic benefits to the child of such placement; (3) the effect the disabled child will have

on the teacher and the children in the regular class; and (4) the costs of educating the child in a regular classroom with appropriate services, as compared to the cost of educating the child in the district's proposed setting. (*Sacramento City Unified School Dist. v. Rachel H.* (9th Cir. 1994) 14 F.3d 1398, 1400-1402.)

The IEP

8. In developing the IEP, the IEP team shall consider the strengths of the child, the concerns of the parents for enhancing the education of their child, the results of the initial evaluation or most recent evaluation of the child and the academic, functional and developmental needs of the child. (20 U.S.C. § 1414(d)(3)(A).)

9. A disabled child's IEP must be tailored to the unique educational needs of that particular child who, by reason of disability, needs special education and related services. (*Heather v. State of Wisconsin* (1997) 125 F.3d 1045,1055.) The term "unique educational needs" is to be broadly construed to include the student's academic, social, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No.1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500.)

10. The Ninth Circuit Court of Appeals has endorsed the "snapshot" rule, explaining that the actions of the District cannot be "judged exclusively in hindsight...an IEP must take into account what was, and what was not, objectively reasonable when the snapshot was taken, that is, at the time the IEP was drafted." (*Adams v. State of Oregon* (9th Cir. 1999) 195 F. 3d 1141,1149.)

Parental Participation

11. Parents play a "significant role" in the development of the IEP and are required and vital members of the IEP team. (*Winkelman, supra*, 127 S.Ct. 1994 at pp. 2000-2001; 20 U.S.C. § 1414 (d)(1)(B)(i); 35 C.F.R. § 300.322; Ed Code, § 56341, subd. (b)(1).) In order to fulfill the goal of parental participation in the IEP process, the school district is required to conduct, not just an IEP meeting, but also a meaningful IEP meeting. (*W.G. v. Board of Trustees of Target Range School District No. 23* (9th Cir. 1992) 960 F.2d 1479, 1485*(Target Range)*; *Fuhrmann v. East Hanover Bd. of Educ.* (*Fuhrmann*)(3d Cir. 1993) 993 F.2d ten31, 1036 (*Fuhrmann*).) A parent has meaningfully participated in the development of an IEP when she is informed of her child's problems, attends the IEP meeting, expresses her disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools.* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann. supra*, 993 F.2d at p. 1036.)

12. In matters alleging procedural violations, a denial of FAPE may only be shown if the procedural violations impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision

of FAPE, or caused a deprivation of educational benefits. (Ed. Code, § 56505, subd. (f)(2); see also *Target Range, supra*, 960 F.2d at p. 1484.)

Assessments

13. The school district must conduct a reassessment of the special education student not more frequently than once a year, but at least once every three years. (20 U.S.C. § 1414(a)(2)(B); Ed. Code, § 56381, subd. (a)(2).) The district must conduct a reassessment if the district "determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation." (20 U.S.C. § 1414(a)(2)(A)(i); see also Ed. Code, § 56381, subd. (a).) Absent an agreement to the contrary between a school district and a student's parents, reassessments must not occur more than once a year, or more than three years apart. (34 C.F.R. 300.303(b)(1); Ed. Code, § 56381, subd. (a)(2).)

14. In performing a reassessment, a school district must review existing assessment data, including information provided by the parents and observations by teachers and service providers. (20 U.S.C. § 1414(c)(1)(A); Ed. Code, § 56381, subd. (b)(1).) Based upon such review, the district must identify any additional information that is needed by the IEP team to determine the present levels of academic achievement and related developmental needs of the student and to decide whether modifications or additions in the child's special education program are needed. (20 U.S.C. § 1414(c)(1)(B); Ed. Code, § 56381, subd. (b)(2).) The district must perform assessments that are necessary to obtain such information concerning the student. (20 U.S.C. § 1414(c)(2); Ed. Code, § 56381, subd. (c).) An IEP meeting to review the results of an assessment must be held within 60 days, not counting days between a pupil's regular school sessions, terms, or days of vacation in excess of 5 days, from the receipt of the parent's written consent to the assessment, unless the parent agrees, in writing, to an extension. (Ed. Code, §§ 56043, subd. (f)(1); 56344.)

15. Once a parent has consented to pupil's initial assessment and has enrolled pupil in special education instruction and related services provided at public expense, districts may bring a due process complaint seeking an order that requires the child to present for reassessment in the event parents withhold consent. (20 U.S.C. § 1415(b)(6)(A); Ed. Code, § 56501, subd. (a)(3); *Schaffer, supra*, 546 U.S. at pp. 52-53.)

16. School districts have the right to conduct assessments and reassessments of students who request and receive special education and related services. A student who does not permit such testing is not entitled to receive benefits under the IDEA and related state law. (*Gregory K., supra*, 811 F.2d at p. 1315 ["If the parents want [their child] to receive special education under the Act, they are obligated to permit such testing."])

Compensatory Education

17. School districts may be ordered to provide compensatory education or additional services to a pupil who has been denied a free appropriate public education.

(*Student W. v. Puyallup School District* (9th Cir. 1994) 31 F.3d 1489, 1496 (*Student W*)..) The conduct of both parties must be reviewed and considered to determine whether relief is appropriate. (*Ibid.*) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid ex rel. Reid v. District of Columbia* (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*) Relief may be provided even though the student is no longer eligible for special education services. (*Capistrano Unified School District v. Wartenburg* (9th Cir. 1995) 59 F.3d 884, 890; *Student W., supra,* 31 F.3d at p. 1496.)

Determination of Issues

Based on the factual findings and applicable law, it is determined as follows:

Issue One: Did District deny Student a FAPE in his Individualized Educational Program (IEP) dated May 10, 2007, as modified July 19, 2007, for the 2007-2008 school year by eliminating seven-and-a-half hours of home-based instruction as part of its plan to transition Student from ACES NPA to a District site?

18. Based upon Legal Conclusions 1 through 10 and Factual Findings 1 through 44, District did not deny Student a FAPE by eliminating the home feeding program. Student's home based program was intended as a temporary feeding program to adapt Student to feeding at school. The home program was not intended to be an instructional program. District's decision to terminate the home feeding program was consistent with the extensive findings and recommendations of the Rady Team. Student was healthy. He was accepting several bottles of formula daily from persons at ACES NPA, familiar and unfamiliar. Although Student's home may be his most comfortable environment, and Parents might prefer Student to continue with therapy at home, ACES NPA was ready and capable of working on these same issues at its site. ACES NPA had established the ideal environment for implementing a site-based feeding program. ACES NPA had established a routine for Student and Student was responding well to his environment and to his NPAs. Student had been receiving support at home from the same person(s) he sees daily at ACES NPA. ACES NPA was able to mirror the home environment and follow the same preparation process at the ACES NPA site. Student was receptive to having his soft food presented to him at the ACES NPA site, if not yet willing to eat. Student was responding well to therapy at the school site. District was not responsible for cutting Student's instructional time. Student's advocate instructed ACES NPA not to proceed with a feeding program at its site. His medical doctor instructed ACES NPA not to increase the school day.

Issue 2: Did District deny Student a FAPE in his IEP dated May 10, 2007, as modified July 19, 2007, for the 2007-2008 school year, when it unilaterally revised Student's feeding goal 13?

19. Based upon Legal Conclusions 11 through 12, and Factual Findings 45 through 49, District did not deny Student a FAPE. Ms. Laurick did modify the feeding goal without expressly discussing it with the IEP team. However, the termination of the home feeding program was extensively discussed at the IEP team meeting and goal 13 directly related to the home feeding program. Further, after the May 10 IEP team meeting, District and Parents exchanged written positions about the termination of the goal, and Parents had an opportunity to discuss the goal at two additional IEP team meetings. Parents further participated as IEP team members by instructing ACES NPA not to implement the goal at its site. Accordingly, Ms. Laurick's conduct did not impact Parents' right to participate.

20. Ms. Laurick's conduct did not deprive Student of an educational benefit. As set forth in Legal Conclusions Legal Conclusions 1 through 10, and Factual Findings 1 through 44, the termination of the home feeding program did not deny Student a FAPE.

Issue 3: Did District deny Student a FAPE in his IEP dated May 10, 2007, as modified July 19, 2007, for the 2007-2008 school year when it offered placement at DCPC?

21. Based upon Legal Conclusions 1 through 10, and Factual Findings 1 through 13, and 50 through 74, District failed to offer Student a FAPE when it offered placement at DCPC. District's proposed placement was not reasonably calculated to provide Student an educational benefit in the least restrictive environment during the 2007-2008 school year. As set forth in Factual Findings 50 through 67, Student's unique sensory and adaptive needs impede his ability to benefit from instruction in an open classroom and without a one-on-one instructional aide. When confronted with too much stimuli, particularly noise, he no longer can focus on instruction and often "shuts down." Student is capable of making progress as demonstrated by his advances at ACES NPA, but he needs to be in an isolated environment. Although DCPC offers the advantage of having OT and LAS services on site, the classroom environment and pupil population would prevent Student was receiving an educational benefit.

22. As set forth in Factual Findings 68 through 74, at the time of District's offer, DCPC did not constitute the least restrictive environment for Student. Not one of Student's 26 IEP goals addressed peer interaction. Given the extensive interventions dictated by his IEP and incorporated into his daily instructional day, Student could not receive an academic benefit in an open classroom with disruptive peers, and without a one-on-one aide. Further, the nonacademic benefits to Student of his exposure to pupils at DCPC are incidental. DCPC does not offer a stable pool of age appropriate peers for him to be with at the lunch table or on the playground. Pupils of various ages cycle through DCPC within three or four months. DCPC is promoted as a temporary placement for pupils of various ages with severe behavior problems. At the time of the May 10 IEP, ACES NPA was the least restrictive environment for Student.

23. As set forth throughout the Factual Findings, ACES NPA was reasonably calculated to provide Student with an educational benefit during the 2007-2008 school year. ACES NPA had developed and successfully implemented 26 goals. Student was making

great progress. ACES NPA provided an educational program tailored to Student's unique needs by eliminating distractions that would impede his access to instruction and therapy. Student required an isolated environment to advance. Student could not yet benefit from interaction with peers in his instructional setting. ACES NPA provided Student an educational benefit in the least restrictive environment.

District's Motion to Dismiss

24. Based upon Legal Conclusions 13 through 16 and Factual Findings 75 through 79, District's Motion to Dismiss is denied. District delayed retaining Dr. Taras until approximately June 30, 2007. Dr. Taras did not review the relevant records until mid-August, two weeks before his interview with Student's neurologist, Dr. Mower. Accordingly, District did not take the necessary steps required of a reassessment prior to the May 10 and July 19 IEP team meetings. Further, the triennial assessment was not scheduled until 2008, and Student had been assessed and observed within the last year. Student was not obligated by statute to submit to a medical-feeding reassessment. Student can not be barred from special education services as a result of Parent's refusal to consent, especially where District failed to timely conduct the reassessment.

ORDER

1. District denied Student a FAPE when it offered placement at DCPC for the 2007-2008 school year.

2. District shall continue Student's placement in ACES NPA for the 2007-2008 school year with all related services Student has been receiving.

3. Student's other requests for relief are denied.

PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. Pursuant to this mandate, it is determined that District prevailed on Issues (1) & (2) and Student prevailed on Issue (3).

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by this Decision. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

DATED: February 21, 2008

EILEEN M. COHN
Administrative Law Judge
Office of Administrative Hearings
Special Education Division

DECLARATION OF SERVICE

Case Name: SCHRUM, JACOB **OAH No.: 2007070295**

I, Rosie Ruiz, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 2349 Gateway Oaks Drive, Suite 200, Sacramento, CA 95833. On February 21, 2008, I served a copy of the following document(s) in the action entitled above:

DECISION- OAH 2007070295

to each of the person(s) named below at the addresses listed after each name by the following method(s):

[*see attached service list or*]

Margaret Adams
Attorney at Law
990 Highland Drive, Ste. 212-L
Solana Beach, CA 92075

JONATHAN P READ
Fagen Friedman & Fulfrost, LLP
1 CIVIC CENTER DR, SUITE 300
SAN MARCOS, CA 92069

AARON & JENNIFE SCHRUM
8269 WHELAN DRIVE
SAN DIEGO, CA 92119

☒ **Fax Transmission.** I personally transmitted the above-described document(s) to the person(s) at the fax number(s) listed above, from fax machine number (916) 263-0554, pursuant to Government Code section 11440.20 and California Code of Regulations, title 1, section 1008, subdivision (d). The fax transmission was reported as complete and without error. A copy of the transmission report showing the date and time of transmission, properly issued by the transmitting machine, is attached to this declaration of service.

☒ **Overnight Delivery.** I enclosed the above-described document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package with overnight delivery fees paid at an office or a location regularly utilized for collection and overnight delivery by an authorized overnight delivery courier.
employee of another government agency who regularly retrieves the documents from the Office of Administrative Hearings in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Sacramento, California on February 21, 2008

Rosie Ruiz, Declarant

MARGARET ADAMS
ATTORNEY AT LAW

March 25, 2008

Jennifer and Aaron Schrum
8269 Whelan Drive
San Diego, CA 92119

Re: Statement for Legal Services Rendered
OAH Case No. N2007070295

Date	Description	Time	Rate	Charge
9/21-9/25/2007	Initial records review: read IEPs, assessment reports, various correspondence.	5.25	200	$1,050.00
9/26/2007	Telephone consultation ("TC") with Jennifer Schrum re: due process procedures, timelines, legal arguments.	0.75	200	$150.00
9/27/2007	Drafted Notice of Representation.	0.25	200	$50.00
"	Participated in telephonic Trial Setting Conference ("TSC") with OAH, Atty. J. Read.	1	200	$200.00
"	TC with J. Schrum re: TSC, preparation for due process hearing.	0.4	200	$80.00
9/28/2007	Forwarded Notice of Representation to J. Schrum by email.	0.1		No charge ("N/C")
"	TC with B. Brav re: status of expert witness observations at ACES and DCPC, proposed District placement.	0.25	200	$50.00

Mr. and Mrs. Schrum
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9/28/2007 (Continued)	Recorded notes re: case.	0.1	200	$20.00
10/1/2007	Picked up duplicated records and audio tapes from B. Brav.			N/C
10/2/2007	Email exchange with B. Brav re: stay put issue.	0.25	200	$50.00
"	Read email re: observations by witnesses.	0.1	200	$20.00
10/3/2007	TC with B. Brav re: communica from school district.	0.2	200	$40.00
10/4/2007	Email exchange re: oral motor & feeding program.	0.25	200	$50.00
10/6/2007	Listened to audio tapes (5/20/2007 & 7/19/2007 IEP meetings) as documentary evidence; read educational records, identified potential witnesses.	10.5	200	$2,100.00
10/7/2007	Reviewed administrative record, listened to audio tapes of 5/23/07 meeting; developed chronology of events.	7.5	200	$1,500.00
10/8/2008	Read fax from District's attorney (faxed on 10/5/07); forwarded to clients by email. Email consultation re: Authorization sought by District, potential affirmative defense.	0.2	200	$40.00
10/9/2007	Email exchange re: scheduling TC with clients.	0.1	200	N/C

Mr. and Mrs. Schrum
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10/9/2007 (Continued)	Read and summarized education records: chronology from 9/2006-12/2006.	3.25	200	$650.00
10/10/2007	Read and summarized educational records: chronology from 1/2007-5/2007.	10	200	$2,000.00
"	Researched medical experts through internet search, review of peer-reviewed articles.	0.75	200	$150.00
10/11/2007	Preparation for telephone conference re: legal strategies.	1	200	$200.00
"	TC with J. Schrum & B. Brav re: legal strategies.	1	200	$200.00
"	TC with J. Schrum re: feeding assessment.	0.25	200	$50.00
"	Researched medical expert (out of county) in relation to District's affirmative defense.	0.1	200	$20.00
"	Read and summarized educational records: 5/07-6/07	1.45	200	$290.00
10/12/2007	TC with B. Brav re: due process issues: initial due process complaint & amended integrated complaint Ms. Brav filed.	0.33	200	$66.00
"	Emails (2) to J. Schrum re: statu of obtaining medical expert.	0.25	200	$50.00

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10/12/2007	Drafted letter to Atty. J. Read in response to his 10/5/07 fax.	0.1	200	$20.00
"	Read & summarized records.	3.5	200	$700.00
10/13/2007	Read OAH Order Setting Due Process Hearing and Prehearing Conference.	0.1	200	$20.00
10/14/2007	Email to J. Schrum re: her appt. with nutritionist (expert witness)	0.1	200	$20.00
10/15/2007	Email to J. Schrum re: District witness, feeding evaluation for home program.	0.25	200	$50.00
"	Drafted letter to Atty. J. Read re: Authorization requested.	0.1	200	$20.00
10/16/2007	TC with J. Schrum re: Authorization requested by District to be signed by J. Schrum.	0.66	200	$132.00
"	Received Authorization signed by Mrs. Schrum; faxed to Atty. J. Read.			N/C
"	TC with B. Brav	0.1		N/C
10/18/2007	Reviewed ACES tutoring notebooks (tutor's daily notes re: progress, behavior)	2	200	$400.00
10/19/2007	Reviewed ACES tutoring notebooks	2.91	200	$582.00

10/20/2007	Reviewed ACES' correspondence, progress notes.	2	200	$400.00
10/21/2007	Reviewed administrative record: District's responses to complaints.	1	200	$200.00
10/24/2007	TC with J. Schrum re: ACES records, educational progress.	0.1	200	$20.00
"	TC with B. Brav	1		N/C
10/25/2007	Reviewed documents re: Feeding Clinic evaluation	1	200	$200.00
"	Researched cases re: feeding therapy on OAH website & LRP Special Ed Connection.	1.5	200	$300.00
10/26/2007	Researched cases re: feeding therapy on LRP Special Ed Connection.	4	200	$800.00
"	Email exchange (lengthy) with B. Brav re: prior mediation agreement, initial due process complaint filed by Ms. Brav.	0.75	200	$150.00
10/27/2007	Researched certification of witness.	0.5	200	$100.00
"	Email to B. Brav re: issue statement revision.	0.25	200	$50.00
"	Email to B. Brav re: prior mediation.	0.25	200	$50.00

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10/28/2007	Email to J. Schrum, B. Brav re: nutritional evaluation, Jacob's daily feeding schedule.	0.1		N/C
10/29/2007	TC with B. Brav re: expert witness.	0.9	200	$180.00
"	" re: issues concerning nutritionist.	0.25	200	$50.00
"	Forwarded copy of educational record.	0.1		N/C
"	TC with J. Schrum re: nutritionist as expert; costs of expert testimony.	0.5	200	$100.00
"	Reviewed letter to nutritionist (expert); reviewed documents to be sent to expert.	1.5	200	$300.00
"	Email to J. Schrum re: schedulin meeting re: legal strategies; read reply.	0.1	200	N/C
10/30/2007	TC with B. Brav re: meeting to discuss legal issues, feeding expert.	0.2	200	$40.00
"	Read emails (2) re: feeding protocols with tutors (home program).	0.2	200	$40.00
"	Researched certification of NPA, criteria for NPS.	0.75	200	$150.00
10/31/2007	Read administrative documents re: issue statement and attached exhibits.	3.5	200	$700.00

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11/1/2007	TC with B. Brav re: feeding expert, correspondence by Dr. Taras with CHHC.	0.66	200	N/C
"	Read fax from Pat Laurick re: request for time extension on Authorization; forwarded to J. Schrum.	0.1	200	$20.00
"	Email re: J. Schrum's consent to time extension requested by District for Authorization.	0.25	200	$50.00
"	Telephone calls from B. Navarro (SDUSD) re: Authorization faxed; emailed Authorization as requested, clarified & read text to her.	0.33	200	$66.00
"	Email exchange with J. Schrum re: telephone call from Ms. Navarro.	0.25	200	$50.00
"	Emailed re: status of issue statement and possible amending of complaint.	0.25	200	$50.00
"	Email re: testimony by occupational therapist (expert).	0.2	200	$40.00
"	Read email re: remedy of NPS placement.	0.1	200	$20.00
11/2/2007	Completed review of administrative record	1.83	200	$366.00

"	Email to J. Schrum re: expert witness.	0.1	200	$20.00
"	Prepared trial outlines.	0.33	200	$66.00
11/3/2007	Prepared outlines for home program and feeding issues.	3.82	200	$764.00
"	Read and replied to email re: anticipated affirmative defense by District.	0.17	200	$34.00
"	Summarized feeding progress re: issue of termination of home program.	2.5	200	$500.00
11/5/2007	TC with B. Brav re: witnesses.	0.66	200	$132.00
"	Researched witnesses' publications, in preparation for cross examination.	0.5	200	$100.00
"	Reviewed records to determine records requested but not provided by District.	1	200	$200.00
"	Drafted letter to Atty. J. Read requesting records not yet provided but previously requested.	0.33	200	$66.00
11/6/2007	TC with B. Brav re: scheduling meetings with witnesses.	0.25	200	$50.00
"	Emailed witnesses (4) to schedule meetings, discussed exhibits, scope of testimony.	1	200	$200.00

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"	Reviewed ACES' speech progress report.	0.33	200	$66.00
"	Emailed witness re: report prepared.	0.25	200	$50.00
"	Emailed medical expert re: feeding assessments, in relation to District's affirmative defense.	0.2	200	$40.00
"	Emailed J. Schrum re: hierarchy of feeding skills.	0.15	200	$30.00
11/7/2007	TC with B. Brav re: expert's visit to District's proposed placement.	0.2	200	$40.00
"	Email re: correspondence to pediatrician from Dr. Taras.	0.1	200	$20.00
11/8/2007	TC with B. Brav re: her testimony.	0.5	200	$100.00
"	Reviewed records received from Dr. Taras.	0.75	200	$150.00
"	Fax to District atty. re: records received from Dr. Taras appear incomplete; requested follow-up re: omitted records.	0.1	200	$20.00
11/9/2007	TC with B. Brav re: professionals needed for feeding evaluation.	0.1	200	$20.00
"	Forwarded records received fron Dr. Taras to J. Schrum.	0.1	200	N/C

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"	Email to witness re: District's affirmative defense, scope of testimony, exhibits witness requested to review.	0.25	200	$50.00
"	Read email re: interview with nurse.	0.1	200	$20.00
"	TC from Atty. T. Santos re: educational records requested are available to be picked up.	0.1	200	$20.00
"	Read letter received from Atty. T. Santos.	0.1	200	$20.00
11/10/2007	Listened to District's audio tape of 5/10/07 IEP meeting; compared with parents' tape.	2.5	200	$500.00
"	Email to J. Schrum re: records received from District.	0.1	200	$20.00
"	Read email from B. Brav re: 5.5 hour school day, including home program, sought.	0.1	200	$20.00
"	Met with Mr./Mrs. Schrum in preparation for their testimony.	4	200	$800.00
"	Read email from expert witness re: possible testimony.	0.1	200	$20.00
"	Follow-up email to Mr./Mrs. Schrum following meeting.	0.1	200	N/C
11/11/2007	Read and replied to emails from J. Schrum and B. Brav re: legal strategies.	0.5	200	$100.00

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"	Reviewed CV for Dr. Snyder (possible witness).	0.25	200	$50.00
"	Read email from J. Schrum re: correspondence concerning modified feeding goal.	0.25	200	$50.00
"	Email re: documentary evidence court reporter's transcription of IEP meeting & omitted section on District's tape of 5/15/07 meeting.	0.1	200	$20.00
"	Research by law clerk re: various cases.	0.75	50	$37.50
11/12/2007	TC with J. Schrum re: expert testimony.	0.33	200	$66.00
"	TC with B. Brav re: records received from District.	0.75	200	$150.00
"	Read educational records received from District 11/9/07: (8 test protocols, correspondence totalling 302 pps., 6 assessments and progress reports)	10.5	200	$2,100.00
"	Email to witness re: scope of testimony.	0.25	200	$50.00
11/13/2007	TC with J. Schrum re: Authorization for Dr. Snyder to contact CHHC.	0.33	200	$66.00
"	Email to witness re: scheduling testimony.	0.1	200	$20.00

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11/13/2007	Letter to Atty. J. Read re: issues statement for due process hearing.	0.25	200	$50.00
"	Letter to Atty. J. Read re: record previously requested but not provided.	0.33	200	$66.00
"	Letter to Atty. J. Read re: District's proposed placement.	0.33	200	$66.00
"	Read email from J. Schrum re: observation by District witness.	0.1	200	$20.00
"	Read email from A. Schrum re: witness testimony, due process issues.	0.1	200	$20.00
"	Read email from B. Brav re: various due process issues, observations at District's proposed placement.	0.2	200	$40.00
"	TC from Atty. K.Taylor, re: experts' observations at District's proposed placement.	0.1	200	$20.00
"	Email to J. Schrum re: telephone call from Ms. Taylor.	0.1	200	$20.00
"	Selected exhibits, drafted Exhibit List.	1.75	200	$350.00
11/14/2007	TC with B. Brav re: proposed issues and remedies for Prehearing Hearing Conference statement.	1	200	$200.00
"	Drafted witness list.	1	200	$200.00
"	Revised Prehearing Conference Statement, faxed to District attys. and OAH.	1.25	200	$250.00

"	Read email from nutritionist - expert witness.	0.1	200	$20.00
"	Reviewed CV of witness.	0.1	200	$20.00
"	Read District's Request for Withdrawal of Due Process Hearing Complaint.	0.1	200	$20.00
"	Read District's Prehearing Conference Statement.	0.5	200	$100.00
"	Email to Atty. Taylor re: parents' visit to District's proposed placement not approved.	0.1	200	$20.00
11/15/2007	TC with B. Brav re: District's witness list.	0.25	200	$50.00
"	Read District's Motion to Dismiss.	1.25	200	$250.00
"	Email to Atty. Taylor re: expert's visit to District's proposed placement.	0.2	200	$40.00
"	Read District's Suppl. Notice Documentary Evidence	0.15	200	$30.00
11/16/2007	Email exchange with J. Schrum re: possible video testimony by expert.	0.1	200	$20.00
"	Email exchange with witness re: re: possible testimony by telephone.	0.2	200	$40.00
11/17/2007	Issued subpoenas to appear (5 witnesses)	1.5	200	$300.00

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11/18/2007	Email exchange with J. Schrum feeding issues.	0.25	200	$50.00
11/19/2007	TC with J. Schrum re: prehearing conference.	0.5	200	$100.00
"	TC with B. Brav re: Declaration of B. Brav in Support of Pet'r's Opp'n to District's Mot. to Dismiss	0.25	200	$50.00
"	Email with J. Schrum re: info. needed by expert witness.	0.1	200	$20.00
"	Telephonic prehearing conference with ALJ Cohn, Atty. T. Santos.	1.25	200	$250.00
"	Read email re: scope of testimony of expert witness.	0.1	200	$20.00
11/20/2007	TC with B. Brav re: meetings with witnesses.	0.1	200	N/C
"	Met with witnesses in preparation for testimony.	1	200	$200.00
"	Drafted Decl. of B. Brav in Support of Pet'r Opposition to District's Motion to Dismiss	3.5	200	$700.00
"	Drafted Declaration of J. Schrum in Support of Pet'r Opposition to District's Motion to Dismiss	3	200	$600.00
"	Read Prehearing Conference Order faxed by OAH	0.2	200	$40.00

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11/21/2007	TC with B. Brav re: telephone call to witness.	0.65	200	$130.00
"	Telephone calls with Atty. Santc re: status of Pet'r Opposition to District's Motion to Dismiss, status of exhibits labeled per OAH order.	0.2	200	$40.00
"	Witness preparation meeting.	1	200	$200.00
"	TC to OAH re: status of Pet'r Opp. To District's Motion to Dismiss; requested time extension.	0.1	200	$20.00
"	Meeting with witness re: preparation for testimony.	1.25	200	$250.00
"	Read email re: daily schedule at ACES.	0.1	200	$20.00
"	Drafted Pet'r Opp. To District's Mot. to Dismiss	4	200	$800.00
"	Edited Declarations in Support c Pet'r Opp. To District's Motion to Dismiss	2	200	$400.00
11/22/2007	TC with B. Brav re: meeting with witness.	0.75	200	$150.00
"	Reviewed binders of exhibits.	3	200	$600.00
"	Drafted Pet'r Opp. To District's Mot. to Dismiss	4	200	$800.00
11/23/2007	TC with B. Brav re: evidence binders.	0.2	200	N/C

"	TC with witness in preparation for testimony.	1	200	$200.00
"	Emailed expert witness.	0.25	200	$50.00
11/24/2007	Selected exhibits for expert's review, preparation for testimony.	0.75	200	$150.00
"	Drafted direct examination questions for various witnesses.	5	200	$1,000.00
"	Research by law clerk re: various cases.	0.75	50	$37.50
"	Read emails from B. Brav re: feeding hierarchy & home feeding program.	0.25	200	$50.00
"	Email exchange with J. Schrum re: revisions to exhibit binders.	0.33	200	$66.00
"	Listened to audio tape of interview with nutritionist - expert.	0.5	200	$100.00
11/25/2007	Wrote questions for direct examination of Mr./Mrs. Schrum	6.5	200	$1,300.00
"	Compiled documentary evidence binders (paralegal rate).	2.5	80	$200.00
"	Read email re: interview with nutritionist.	0.2	200	$40.00
"	Drafted questions for direct testimony - Mr./Mrs. Schrum	1	200	$200.00

11/25/2007	Drafted questions for direct examination of expert.	0.75	200	$150.00
11/26/2007	TC with B. Brav re: schedule for first day of hearing.	0.33	200	$66.00
"	Preparation of questions for direct examination of Dr. Robin.	4.5	200	$900.00
"	TC with witness, preparation for testimony.	0.75	200	$150.00
"	Read email re: feeding issues at preschool.	0.15	200	$30.00
"	Read email re: oral motor exercises at ACES.	0.1	200	$20.00
"	Read Atty. J. Read's letter to ALJ Cohn re: jury duty.	0.1	200	$20.00
"	Prepared Petitioner's Suppl. Witness List	0.5	200	$100.00
"	Email exchange with Atty. J. Re re: schedule of witness testimony.	0.1	200	$20.00
11/27/2007	Due process hearing	8.5	200	$1,700.00
"	Travel to & from hearing at 1/2 rate	1.5	100	$150.00
"	Email re: schedule for witness testimony	0.1	200	$20.00
11/28/2007	Due process hearing	8.5	200	$1,700.00

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11/28/2007	Travel to & from hearing at 1/2 rate	1.5	100	$150.00
"	Revised questions for direct examination.	1	200	$200.00
"	Read email re: witness's availability for testimony.	0.1	200	$20.00
11/29/2007	TC with J. Schrum re: hearing schedule.	0.6	200	$120.00
"	TC with B. Brav in preparation for testimony on 11/30/2007.	0.5	200	$100.00
"	Due process hearing	8.5	200	$1,700.00
"	Travel to & from hearing at 1/2 rate	1.5	100	$150.00
"	Email to expert re: rescheduling testimony.	0.1	200	N/C
11/30/2007	TC with J. Schrum re: hearing issues.	0.25	200	$50.00
"	Due process hearing	8.5	200	$1,700.00
"	Travel to & from hearing at 1/2 rate	1.5	100	$150.00
12/1/2007	Read email re: misc. file references.	0.2	200	$40.00
12/2/2007	Preparation for cross examinatio of various witnesses.	3.25	200	$650.00

12/3/2007	TC with J. Schrum re: hearing issues.	0.9	200	$180.00
"	TC with J. Schrum re: IEP issues.	0.5	200	N/C
"	TC with J. Schrum re: San Diego Regional Center issues.	0.1	200	N/C
"	Preparation for cross examinatio of various witnesses (drafted questions).	2	200	$400.00
12/4/2007	Preparation for cross examinatio of various witnesses.	3.5	200	$700.00
"	Research: request for production of records in OAH matters; read OAH orders at OAH website.	1	200	$200.00
12/5/2007	TC with J. Schrum re: educational records not received.	0.5	200	$100.00
"	TC with B. Brav re: IEP issues.	0.1	200	N/C
"	Researched motion to compel & subpoena duces tecum in OAH matters: read orders at OAH website.	0.75	200	$150.00
"	Research by law clerk re: various cases	0.5	50	$25.00
12/6/2007	TC with J. Schrum re: hearing issues.	0.25	200	$50.00

12/6/2007	Drafted letter re: educational records previously requested but not provided by District.	0.5	200	$100.00
12/7/2007	Issued subpoenas duces tecum (5) via certified mail for production of educational records previously requested but not provided by District.	2	200	$400.00
"	Read email from expert witness re: guidelines for occupational therapists related to feeding, in preparation for cross examination.	0.1	200	$20.00
12/8/2007	TC with B. Brav re: IEP issues.	0.1	200	N/C
12/9/2007	Researched application of mootness doctrine in educational context on Special Ed Connection.	1	200	$200.00
"	Email consultation.	0.15	200	$30.00
"	Drafted letter to District atty.	0.5	200	$100.00
12/10/2007	TC with J. Schrum re: hearing.	0.25	200	$50.00
12/11/2007	TC with B. Brav re: educational records not produced.	0.66	200	$132.00
"	Checked delivery status of subpoenas duces tecum via USPS's Track & Confirm.	0.1	200	$20.00
12/12/2007	Research by law clerk re: various cases.	0.5	50	$25.00

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12/12/2007	Read letter from Atty. J. Read re: records previously requested but not provided.	0.1	200	$20.00
"	Issued subpoenas duces tecum (5) for educational records previously requested but not provided.	0.75	200	$150.00
"	Reviewed peer-reviewed articles in preparation for cross examination.	0.33	200	$66.00
"	Reviewed CV of District's witness.	0.1	200	$20.00
12/13/2007	TC with B. Brav re: additional winter break services for Jacob Schrum.	0.5	200	$100.00
"	Drafted letter to Atty. J. Read re additional winter break services.	0.2	200	$40.00
"	Read letter from Atty. J. Read re: records requested from District but not provided.	0.1	200	$20.00
"	Drafted Pet'r Motion for Order Directing District to Comply with Subpoenas Duces Tecum	3.5	200	$700.00
12/14/2007	TC with B. Brav re: IEP issues.	0.1	200	N/C
"	Returned ALJ Cohn's voice mail re: possible continuance of hearing.	0.1	200	$20.00

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"	Emails to expert witness re: rescheduling testimony due to continuance of hearing.	0.1	200	N/C
"	Read letter from Atty. J. Read re: winter session services.	0.1	200	$20.00
12/15/2007	Researched LRP database re: observation notes as educational records.	3.5	200	$700.00
12/16/2007	TC with J. Schrum re: Declaration by A. Schrum.	0.5	200	$100.00
"	Drafted Petitioner's Opp'n to District's Motion to Continue and Declaration of A. Schrum in Support of Pet'r's Opp'n.	2.5	200	$500.00
"	Drafted cross examination questions.	3.75	200	$750.00
12/17/2007	TC (2) with J. Schrum re: hearing issues.	0.6	200	$120.00
"	Read email from A. Schrum re: review of District exhibits, possible areas for cross examination of various District witnesses.	0.2	200	$40.00
"	Drafted letter to ALJ Cohn re: schedule of witness testimony, in response to voice mail message on 12/14/07 from ALJ Cohn.	0.25	200	$50.00
"	Drafted letter to Atty. J. Read re: winter session services.	0.1	200	$20.00

12/17/2007	Read email from J. Read re: witness schedule.	0.1	200	$20.00
"	Preparation for cross examination: drafted questions for various witnesses.	1.5	200	$300.00
12/18/2007	Due process hearing	8.5	200	$1,700.00
"	Travel to & from hearing at 1/2 rate	1.5	100	$150.00
"	Preparation for cross examinatio of witness.	3.5	200	$700.00
12/19/2007	TC with J. Schrum re: hearing schedule.	0.1	200	$20.00
"	Due process hearing	8.5	200	$1,700.00
"	Travel to & from hearing at 1/2 rate	1.5	100	$150.00
12/20/2007	TC with J. Schrum re: observation notes received.	0.6	200	$120.00
12/21/2007	Reviewed Laurie Chartier's observation notes faxed by Atty. J. Read.	0.33	200	$66.00
12/31/2007	TC with J. Schrum re: observation notes of Ms. Chartier.	0.33	200	$66.00
1/2/2008	TC with B. Brav re: observation notes.	0.1	200	N/C
1/3/2008	TC with J. Schrum re: hearing issues.	0.5	200	$100.00

1/3/2008	TC with J. Schrum re: speech/language issues.	0.1	200	N/C
"	TC with B. Brav re: need for rebuttal testimony.	0.75	200	$150.00
1/4/2008	TC with B. Brav re: phone call received from ALJ Cohn's clerk.	0.1	200	$20.00
"	TC from clerk in ALJ Cohn's office re: hearing on 1/10/08.	0.1	200	$20.00
"	Emailed J. Schrum re: TC from ALJ Cohn's clerk.	0.1	200	$20.00
"	Read OAH Notice and Order Re: Continued Hearing	0.1	200	$20.00
1/6/2008	TC with J. Schrum re: hearing schedule.	0.25	200	$50.00
1/7/2008	TC with J. Schrum re: hearing issues.	0.25	200	$50.00
"	TC with B. Brav re: hearing issues.	0.4	200	N/C
1/8/2008	TC with B. Brav re: scope of rebuttal testimony.	0.33	200	$66.00
"	Selected and emailed exhibits for review by B. Brav, in preparation for rebuttal testimony.	0.25	200	$50.00
"	Researched cases re: parental consent for reevaluation.	0.5	200	$100.00

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1/8/2008	Research by law clerk re: various cases.	0.33	50	$16.50
"	Reviewed documentary evidence in preparation for cross examination.	0.75	200	$150.00
"	Read letter from Atty. J. Read to ALJ Cohn re: Order Re: Continued Hearing	0.1	200	$20.00
"	Drafted letter responding to letter from Atty. J. Read re: Order Re: Continued Hearing	0.2	200	$40.00
"	Transmitted supplemental exhibit to OAH, District's attys.	0.2	200	$40.00
1/9/2008	TC with A. Schrum re: hearing on 1/10/2008; possibly called as witness.	0.1	200	$20.00
"	TC with B. Brav (rebuttal witness preparation)	0.65	200	$130.00
"	Preparation for cross examinatio of witness.	3.5	200	$700.00
1/10/2008	TC with B. Brav re: witness schedule, rebuttal testimony.	0.25	200	$50.00
"	Due process hearing	3.25	200	$650.00
"	Travel to & from hearing at 1/2 rate	1.5	100	$150.00
"	TC with J. Schrum re: hearing	0.6	200	$120.00

1/11/2008	TC with J. Schrum re: hearing, closing brief.	0.5	200	$100.00
"	Telephone call with OAH clerk re: ordering audio transcripts of hearing; prepared OAH Form 5A; faxed form to Mr.Read.	0.5	200	$100.00
"	Email exchange with J. Schrum closing brief/District's mootness defense.	0.33	200	$66.00
"	Reviewed invoice from expert witness.	0.1	200	$20.00
1/12/2008	Drafted partial outline for closin brief.	5.5	200	$1,100.00
1/14/2008	TC with B. Brav re: closing brief.	0.5	200	$100.00
1/16/2008	TC with J. Schrum re: closing brief.	0.42	200	$84.00
1/19/2008	Reviewed audio transcript of hearing in preparation for writing closing brief. (Transcript totaled apprx. 38 hours.)	5.5	200	$1,100.00
1/20/2008	Reviewed audio transcript of hearing in preparation for writing closing brief.	6.25	200	$1,250.00
1/21/2008	Reviewed audio transcript of hearing in preparation for writing closing brief.	4.5	200	$900.00
"	Email to J. Schrum re: closing brief/District's mootness defense.	0.1	200	$20.00

Mr. and Mrs. Schrum
Page 27
March 25, 2008

1/22/2008	Reviewed audio transcript of hearing.	6.5	200	$1,300.00
1/23/2008	Researched and drafted closing brief.	9.5	200	$1,900.00
1/24/2008	Drafted closing brief.	3	200	$600.00
1/25/2008	TC with J. Schrum re: closing brief.	0.25	200	$50.00
"	Drafted closing brief.	7.78	200	$1,556.00
1/26/2008	Edited closing brief.	3.25	200	$650.00
1/27/2008	Edited closing brief.	4.5	200	$900.00
1/29/2008	Read District's closing brief.	0.5	200	$100.00
2/21/2008	Read OAH Decision	1.5	200	$300.00
Total: Legal Fees		361.83 hours		$69,699.50

Costs and direct expenses:

9/30/2007	FedEx Kinko's: copy of records	$449.49
10/27/2007	FexEx Kinko's: copies	$17.33
10/28/2007	FexEx Kinko's: copies	$62.06
10/31/2007	MVP digital.com: duplication of 3 audio cassettes	$25.86
11/1/2007	MVP digital.com: duplication of 3 audio cassettes	$25.86
11/4/2007	MVP digital.com: duplication of 24 audio cassettes (8 masters, 3 each)	$258.60
11/6/2007	U.S.P.O.: packet to expert witness	$8.89
11/9/2007	Affordable Messenger Service	$55.00
11/9/2007	FexEx Kinko's: copies	$86.11
11/12/2007	Messenger Express	
11/13/2007	Messenger Express	$55.00

11/15/2007	FexEx Kinko's: copies	$11.55
11/15/2007	Messenger Express	
11/15/2007	FexEx Kinko's: copies	$35.60
11/16/2007	Messenger Express	$39.50
11/17/2007	U.S.P.O.: certified mail - subpoenas to appear	$21.35
11/17/2007	ASAP Court Reporting, Inc. Original and 2 copies, transcript of IEP meeting held 5/10/07, transcribed from audio tapes.	$2,250.00
11/17/2007	FexEx Kinko's: copies	$44.92
11/19/2007	U.S.P.O.: packet to expert witness	$29.75
11/21/2007	Staples: copies (exhibits)	$432.25
11/24/2007	FedEx - shipping exhibits to witness (Dr.Shaw)	$98.91
11/26/2007	Messenger Express	$41.00
11/26/2007	ASAP Court Reporting, Inc. 3 addtl. certified copies, transcript of IEP meeting	$75.00
11/27-30/2007 12/18-19/2007, 1/10/2008	Parking at hearing @ $14/day	$98.00
12/7/2007	U.S.P.O.: certified mail - subpoenas duces tecum	$28.85
12/12/2007	Diversified Legal Services - service of subpoenas to Fagen Friedman & Fulfrost LLP	$46.50
12/18-19/2007	"	
1/10/2008	"	
1/11/2008	OAH: audio transcript of hearing	$45.00
1/11/2008	FedEx (shipping payment for transcript)	$35.13
1/16/2008	FedEx (OAH-shipped transcript)	$44.45
Subtotal: Costs and Expenses		**$4,421.96**
Total Legal Fees, Costs and Expenses		**$74,121.46**

Payments received:

10/1/2007	Payment ck. 3243 d. 9/26/07	$5,000.00
11/13/2007	Payment ck. 3265 d. 11/12/07	$5,000.00
2/8/2008	Payment ck. 3306 d. 2/07/08	$500.00

2/28/2008	Payment ck. 3319 d. 2/28/08	$1,000.00
3/18/2008	Payment ck. 3326 d. 3/17/08	$1,000.00
Subtotal: Payments Received		**$12,500.00**
Balance Due		**$61,621.46**

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

FILED
08 MAY 22 PM 1:39
CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY

I. (a) PLAINTIFFS

Schrum, Aaron; Schrum, Jennifer

(b) County of Residence of First Listed Plaintiff: San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
Law Ofc. of Margaret Adams, 12526 High Bluff Dr., Suite 300
San Diego, CA 92130 (858) 509-7750

DEFENDANTS

San Diego Unified School District

County of Residence of First Listed Defendant: San Diego
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

'08 CV 0911 JLS BLM

Attorneys (If Known)
Patrick Frost, Asst. General Counsel, San Diego USD

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

PRISONER PETITIONS
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

FORFEITURE/PENALTY
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (**Do not cite jurisdictional statutes unless diversity**):
20 U.S.C. 1400

Brief description of cause:
Violation of IDEA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 74,121.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE: 05/21/2008

SIGNATURE OF ATTORNEY OF RECORD: Margaret Adams

FOR OFFICE USE ONLY

RECEIPT # 151205 AMOUNT 350.— APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

5/22/08

CR

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 151205 - SR

May 22, 2008
13:38:11

Civ Fil Non-Pris
USAO #.: 08CV0911 CIV. FIL.
Judge..: BARRY T MOSKOWITZ
Amount.: $350.00 CK
Check#.: PC#2297

Total-> $350.00

FROM: SCHRUM V. SAN DIEGO UNIFIED
SCHOOL DISTRICT
CIVIL FILING

Margaret H. Adams (State Bar No. 220089)
Law Office of Margaret Adams
12526 High Bluff Drive, Suite 300
San Diego, California 92130
Telephone: (858) 509-7750
Facsimile: (858) 509-7952
Email: mimiadams@gmail.com

FILED
08 MAY 22 PM 1:39
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY: [signature] DEPUTY

Attorney for Plaintiffs
AARON SCHRUM and JENNIFER SCHRUM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

AARON SCHRUM and JENNIFER SCHRUM, Plaintiffs, v. SAN DIEGO UNIFIED SCHOOL DISTRICT, Defendant.	Case No.: '08 CV 0911 JLS BLM **DECLARATION OF SERVICE** COMPLAINT FOR ATTORNEY FEES AND COSTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (20 U.S.C. § 14159(i)(3) and Cal. Educ. §56507)

I, Margaret Adams, declare that I am over the age of eighteen years, and I am not a party to this action. On May 22, 2008 at a.m., I served the document listed below on the interested parties in this action in the manner indicated below.

Document Served

1. Complaint for Attorney Fees and Costs Under the Individuals with Disabilities Education Act (20 U.S.C. § 1415(i)(3) and Cal. Educ. §56507).

Parties Served

San Diego Unified School District
Office of General Counsel
4100 Normal Street, Room 2148
San Diego, CA 92103

San Diego Unified School District
c/o Patrick D. Frost, Esq.
Assistant General Counsel
4100 Normal Street, Annex 7
San Diego, CA 92103-2682

Manner of Service:

[X] **BY MAIL**: I am readily familiar with the business practice for collection and processing correspondence for mailing with the United States Postal Service. I know that the correspondence was deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelopes were sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Diego, California. I caused the document(s) to be sent by mail via United States Postal Service to the party(ies) identified above.

[ ] **BY FEDERAL EXPRESS**: I am readily familiar with the business practice for collection and processing correspondence for mailing with the Federal Express Service. I know that the envelopes were sealed, and deposited with Federal Express at San Diego, California. I caused the document(s) to be sent by Federal Express Service to the party(ies) identified above.

[ ] **[PERSONAL SERVICE]** by causing the document(s) listed above to be delivered via hand delivery by Diversified Legal Services, whose address is 4665 Park Blvd., San Diego, California 92116 before 5:00 p.m. to the person(s) at the address(es) set forth above.

[ ] **BY FACSIMILE**: I caused the document(s) to be sent via facsimile to the parties identified above. The facsimile machine I used complied with California Rules of Court, Rule 2003(3), the transmission was reported as complete, and no error was reported by the machine. Pursuant to California Rules of Court, Rule 2005, I caused the machine to print a transmission record of the transmission.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at San Diego, California, on May 22, 2008.

Margaret Adams
Attorney for Plaintiffs